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Public Welfare

45

PART 1200 TO END
Revised as of October 1, 1988

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PART 1200 TO END

Revised as of October 1, 1988

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To cite the regulations in this volume use title, part and section number. Thus, 45 CFR 1201.735-101 *refers to Title 45, Part 1201, section 735-101.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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An index to the text of "Title 3—The President" is carried within that volume.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1988.

THIS TITLE

Title 45—PUBLIC WELFARE is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1-199, 200-499, 500-1199, and 1200 to end. Volume one (Parts 1-199) contains all current regulations issued under Subtitle A—Department of Health and Human Services, General Administration. Volume two (Parts 200-499) contains all current regulations issued under Chapter II—Office of Family Assistance (Assistance Programs), Family Support Administration, Department of Health and Human Services, Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Family Support Administration, Department of Health and Human Services, and Chapter IV—Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services. Volume three (Parts 500-1199) contains all current regulations issued under Chapter V—Foreign Claims Settlement Commission of the United States, Department of Justice, Chapter VI—National Science Foundation, Chapter VII—Commission on Civil Rights, Chapter VIII—Office of Personnel Management, Chapter X—Office of Community Services, Family Support Administration, Department of Health and Human Services, and Chapter XI—National Foundation on the Arts and the Humanities. Volume four (Part 1200-End) contains all current regulations issued under Chapter XII—ACTION, Chapter XIII—Office of Human Development Services, Department of Health and Human Services, Chapter XVI—Legal Services Corporation, Chapter XVII—National Commission on Libraries and Information Science, Chapter XVIII—Harry S Truman Scholarship Foundation, Chapter XX—Commision on the Bicentennial of the United States Constitution, Chapter XXI—Commission of Fine Arts, and Chapter XXII—Christopher Columbus Quincentenary Jubilee Commission. The contents of these volumes represent all of the current regulations codified under this title of the CFR as of October 1, 1988.

A subject index to 45 CFR Parts 680-684 appears in the Finding Aids section of the volume containing Parts 500-1199. Those amendments to Part 801—Voting Rights Program, Appendixes A, B, and D, which apply to Texas also appear in Spanish following Appendix D.

Redesignation tables appear in the Finding Aids section of each volume. A derivation table relating to the disposition of sections in Part 101 appears in the first volume.

For this volume Miriam S. Braganca was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Ruth C. Pontius.

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Title 45—Public Welfare

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PART 1201—STANDARDS OF CONDUCT

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1201.735-401 Submission of statements.
1201.735-402 Review of statements.

AUTHORITY: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1964-1965, Supp., p. 306, 5 CFR 735.104.

SOURCE: 43 FR 46022, Oct. 5, 1978, unless otherwise noted.

Subpart A—General

§ 1201.735-101 Introduction.

(a) Executive Order No. 11222 directs the Civil Service Commission to require each agency head to review and reissue his or her agency's regulations regarding the ethical conduct and other responsibilities of all its employees. One of the main purposes of the regulations in this part is to encourage individuals faced with questions involving subjective judgment to seek counsel and guidance. The general counsel is designated to be the counselor for ACTION with respect to these matters. Associate and assistant general counsels are designated to be deputy counselors. They will provide authoritative advice and guidance in this area to any ACTION employee who seeks it.

(b) The ACTION Committee on Conflict of Interests will review and monitor the agency's policies and procedures on conflict of interests. The committee shall consist of the general counsel, the Assistant Director of Administration and Finance, the Assistant Director of the Office of Compliance, the Director of Contracts and Grants Management Division, a Deputy Associate Director of Domestic Operations, a Deputy Associate Director for International Operations, a Deputy Assistant Director for the Office of Policy and Planning, and the Director's designee, who shall be a nonvoting member. The committee shall have the authority to:

(1) Adopt the procedures necessary to insure the implementation of and compliance with the conflict of interest regulations found at §§ 1201.735-301 through 1201.735-305.

(2) Issue interpretive opinions or clarifying statements on actual or hypothetical situations involving the provisions of §§ 1201.735-301 through 1201.735-305.

(3) Accept and review reports filed under § 1201.735-302(b).

(4) Grant specific relief from the provisions of §§ 1201.735-303 through 1201.735-305 by a majority vote of the committee, if, after due consideration, the committee finds that:

(i) No actual conflict of interest exists, and

(ii) The purpose of the rule would not be served by its strict application, and

(iii) A substantial inequity would otherwise occur. In each such case the committee shall issue a written decision setting forth its findings as required above. The committee may make any exception subject to such conditions and restrictions as it deems appropriate.

(c) Any violation of the regulations in this part may be cause for disciplinary action. Violation of those provisions of the regulations in this part which reflect legal prohibitions may also entail penalties provided by law.

(d) This part applies to all employees of ACTION. "Employee" as used in this part includes regular employees, Presidential appointees, "special Government employees," experts, and consultants whether employed on a full-time or intermittent basis.

§ 1201.735-102 Definitions.

(a) "Special Government employee" as used herein means a person appointed or employed to perform temporary duties for ACTION with or without compensation, on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 days.

(b) "Regular Government employee" as used herein means any officer or employee other than a special Government employee.

(c) "Organization" as used herein includes profit and nonprofit corporations, associations, partnerships, trusts, sole proprietorships, foundations, and State and local government units.

(d) "Grantee" as used herein means any organization that receives financial assistance from ACTION including the assignment of volunteers.

(e) "Potential Grantee or Contractor" means any organization that has submitted a proposal, application, or otherwise indicated in writing its intent to apply for or seek a specific grant or contract.

(f) "Associated with" means:

(1) That the person is a director of the organization or is a member of a board or committee which exercises a recommending or supervisory function in connection with an ACTION project;

(2) That the person or his or her spouse, minor child or other member of his or her immediate household, serves as an employee, officer, owner, trustee, partner, consultant, or paid adviser (general membership in an organization is not included within the definition of "associated with");

(3) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns, individually or collectively, 1 percent or more of the voting shares of an organization;

(4) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns individually or collectively, either beneficially or as trustee, a financial interest in an organization through stock, stock options, bonds, or other securities, or obligations, valued at $50,000 or more; or

(5) That a person has a continuing financial interest in an organization, such as a bona fide pension plan, valued at $5,000 or more, through an arrangement resulting from prior employment or business or professional association.

The term "associated" does not include an indirect interest, such as ownership of shares in a mutual fund, bank or insurance company, which in turn owns an interest in an organization which has, or is seeking or under consideration for a grant or contract. Such and "indirect" interest, as well as financial interests of amounts less than those stated in paragraphs (f) (3) through (5) of this section, are hereby determined pursuant to 18 U.S.C. 208(b)(2) to be too remote to affect the integrity of the employee's services.

Subpart B—General Conduct and Responsibilities of Employees

§ 1201.735-201 Proscribed actions—Executive Order 11222.

As provided by the President in Executive Order No. 11222, whether specifically prohibited by law or in the regulations in this part, no U.S. regular or special Government employees shall take any action which might result in, or create the appearance of:

(a) Using public office or employment for private gain, whether for themselves or for another person, particularly one with whom they have family, business, or financial ties.

(b) Giving preferential treatment to any person.

(c) Impeding Government efficiency or economy.

(d) Losing complete independence or impartiality.

(e) Making a Government decision outside official channels.

(f) Affecting adversely the confidence of the public in the integrity of the Government.

(g) Using Government office or employment to coerce a person to provide financial benefit to themselves or to other persons, particularly anyone with whom they have family, business or financial ties.

§ 1201.735-202 General conduct prejudicial to the Government.

An employee may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct prejudicial to the Government (5 CFR 735.209).

§ 1201.735-203 Criminal statutory prohibitions—Conflict of interest.

(a) *Regular Government employees.* Regular employees of the Government are subject to the following major criminal prohibitions:

(1) They may not, except in the discharge of their official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies to both paid and unpaid representation of another (18 U.S.C. 205).

(2) They may not, after Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government (18 U.S.C. 207).

(3) They may not for 1 year after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of their official responsibility during their last year of Government service. This temporary restraint gives way to the permanent restraint described in paragraph (a)(3) of this section if the matter is one in which the employee participated personally and substantially (18 U.S.C. 207).

(4) They may not receive any salary, or supplementation of their Government salary, from a private source as compensation for services to the Government (18 U.S.C. 209).

(b) *Special Government employees.* Special Government employees are subject to the following major criminal prohibitions:

(1) They may not, except in the discharge of official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which they have at any time participated personally and substantially for the Government (18 U.S.C. 205).

(2) They may not, except in the discharge of official duties, represent anyone else in a matter pending before the agency they serve unless they have served there no more than 60 days during the past 365. They are bound by this restraint despite the fact that the matter is not one in which they have ever participated personally and substantially (18 U.S.C. 205). (See § 1201.735-303(b) for additional nonstatutory Agency restrictions on a special employee representing any other person or organization in a matter pending before the Agency.) The restrictions described in paragraphs (b)(1) and (2) of this section apply to both paid and unpaid representation of another.

(3) They may not participate in their governmental capacity in any matter in which they, their spouse, minor child, outside business associate, or persons with whom they are negotiating for employment have a financial interest (18 U.S.C. 208).

(4) They may not, after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government (18 U.S.C. 207).

(5) They may not, for 1 year after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of their official responsibility during their last year of Government service. This temporary restraint gives way to the permanent restriction described in paragraph (b)(4) of this section if the matter is one in which they participated personally and substantially (18 U.S.C. 207).

Subpart C—Outside Employment Activities and Associations

§ 1201.735-301 In general.

(a) There is no general prohibition against ACTION employees holding outside employment, including teaching, lecturing, or writing. But no employee may engage in outside employment or associatons if they might result in a conflict or an appearance of conflict between the private interests of the employee and his or her official responsibility.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209).

(c) An employee shall not have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his or her Government duties and responsibilities. Nor may an employee engage in, directly or indirectly, a financial transaction as a result of or primarily relying on information obtained through his or her Government employment.

§ 1201.735-302 Association with a potential grantee or contractor prior to ACTION employment.

(a) No employee, or any person subject to his or her supervision, may participate in the decision to award a grant or a contract to an organization with which that employee has been associated in the past 2 years. When an employee becomes aware that such an organization is under consideration for or has applied for a grant or a contract with the Agency, the employee shall notify his or her immediate supervisor in writing. The supervisor shall take whatever steps are necessary to exclude the employee from all aspects of the decision processes regarding the grant or contract.

(b) When the Director, Deputy Director, or an Associate or Assistant Director, becomes aware that an organization with which he or she has been associated in the past 2 years is under consideration for or has applied for a grant or contract with the Agency, he or she shall refrain from participating in the decision process and immediately notify the Assistant Director of the Office of Compliance, who shall select an independent third party, not in any way connected or associated with the concerned official. The third party shall participate in and review the decision process to the extent he or she deems necessary to insure objectivity and the absence of favoritism. Said third party shall preferably be a person experienced in the area of government contracts and grants. The third party shall file a report in writing with the Committee on Conflict of Interest stating his or her conclusions, observations, or objections, if any, to the decision process concerning the grant or contract, which document shall be attached to and become a part of the official file.

§ 1201.735-303 Association with ACTION grantee or contractor or potential grantee or contractor while an ACTION employee.

(a) No regular employee may be associated with any ACTION grantee, contractor, or potential grantee or contractor. Any organization that is associated with a regular employee shall be suspended from consideration as a grantee or contractor.

(b) No regular or special employee, except in his or her official capacity as an ACTION employee, shall either participate in any way on behalf of any orgainzation in the preparation or development of a grant or contract proposal involving ACTION or represent any other organization in a matter pending before ACTION. In the event that a regular or special employee participates while an employee of ACTION in any aspect of the development of a grant or contract proposal on behalf of an organization, or represents another organization in a matter pending before ACTION, that organization shall be suspended from consideration for the grant or contract.

(c) No regular or special employee who, prior to his or her employment at ACTION, participated in the development of a grant or contract proposal on behalf of another organization, shall participate as an ACTION employee, in any aspect of the decision process regarding that grant or contract, or, if the grant or contract is awarded, in any oversight or management capacity in relation to that grant or contract. In addition, any such grant or contract shall only be awarded through a competitive process. In the event a regular or special employee who participated in the development of the grant or contract proposal prior to being employed at ACTION does participate as an ACTION employee in the decision process for such grant or contract, the organization shall be suspended from consideration.

(d) If a special employee participates as an employee of ACTION in any aspect of the development of a proposal or project, whether or not such participation is minimal or substantial, any organization with which he or she is associated shall be suspended from consideration for the grant or contract.

(e) If an organization with which a special employee is associated submits a proposal for a grant or contract, and the special employee did not participate either as an employee of ACTION or an associate of the organization in any aspect of the project or proposal or the application therefor, the matter shall be referred to the Committee on Conflict of Interests for determination. The Committee shall consider the following factors and any others it deems relevant:

(1) The nature, length, and origin of the special employee's relationship with the Agency, the nature and scope of the employees's duties and responsibilities, the division or office to which the employee is assigned, and whether the employee's duties are in any way related to the proposed grant or contract.

(2) The nature, length, and type of the employee's relationship with the organization, whether the employee's position involves policy making or supervision of other employees and the relationship of the position with the organization to the work to be performed under the proposed grant or contract.

(3) Whether awarding the grant or contract to the organization would result in the appearance of or the potential for a conflict of interest.

(4) The process to be used in awarding the grant or contract.

(f) If a special employee wishes to become or remain associated with an ACTION grantee or contractor while he or she is an employee of ACTION, subject to the restrictions paragraphs (b) through (e) of § 1201.735-303, the matter shall be referred to the Committee on Conflict of Interests for determination. The Committee shall consider the following factors and any others it deems relevant:

(1) The nature, length, and origin of the special employee's relationship with the Agency, the nature and scope of the employee's duties and responsibilities, the division or office to which the employee is assigned, and whether the employee's duties are in any way related to the grant or contract.

(2) The nature, length, and type of the employee's relationship with the organization, whether the employee's position involves policymaking or supervision of other employees and the relationship of the position with the organization to the work to be performed under the proposed grant or contract.

(3) Whether such a relationship would result in the appearance of or the potential for a conflict of interest.

(g) Any suspension involving proposed contracts under this rule shall be in accordance with procedures set forth in 41 CFR 1-1.600 et seq.

§ 1201.735-304 Employment after leaving ACTION.

(a) Employees may negotiate for prospective employment with non-Government organizations only when they have no duties as ACTION employees which could affect that organization's interest, or after they have disqualified themselves, on the written permission of their supervisor, from such duties.

(b) For 1 year after leaving ACTION, no regular or special employee may serve pursuant to a personal or nonpersonal services contract or accept employment with an ACTION grantee or contractor for a position in which he or she would be working in any activity supported in whole or in part by ACTION funds received under an ACTION program which was within the boundaries of the employee's official responsibility or in which he or she participated personally while employed at ACTION.

(c) If, within 1 year after leaving ACTION, an individual accepts employment in violation of this rule, ACTION will disallow the costs allocated under the grant or contract for that position. In addition, a letter describing the violation will be placed in the employee's personnel file.

§ 1201.735-305 Employment with ACTION grantee or contractor.

An employee of an ACTION grantee or contractor who is compensated directly or indirectly from ACTION funds will be ineligible to be compensated under any personal or nonpersonal services contract with this Agency which will result in the employee being paid twice for the same time or product.

§ 1201.735-306 Association with non-ACTION grantee or contractor while an ACTION employee.

(a) An employee shall not engage in outside employment which tends to impair the employee's mental or physical capacity to perform his or her official responsibility in an acceptable manner.

(b) *Teaching, lecturing, and writing.* (1) *Use of information.* An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his or her Government employment, except when that information has been or on request will be made available to the general public or when the agency head gives advance written authorization for the use of nonpublic information on the basis that the proposed use is in the public interest.

(2) *Compensation.* No employee may accept compensation or anything of value for any lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the ACTION programs or which draws substantially on official data or ideas which have not become part of the body of public information.

(3) *Clearance of publications.* No employee may submit for publication any writing, other than recruiting information, the contents of which are devoted to the ACTION programs or to any other matter which might be of official concern to the U.S. Government without in advance clearing the writing with the Office of Communications or regional communications specialists, as appropriate. Before clearing any such writing, the Office of Communications will consult with the appropriate ACTION office.

(c) *State and local government employment.* Regular employees may not hold office or engage in outside employment under a State or local government except with prior approval of the General Counsel, ACTION.

(d) All employees not required by § 1201.735-401 to report their outside employment and financial interests shall inform their supervisors of all outside employment they hold or accept.

§ 1201.735-307 Gifts, entertainment, and favors.

(a) *From donors dealing with ACTION.* (1) No regular or special employees may solicit or accept, directly or indirectly, for themselves, for any member of their family, or for any person with whom they have business or financial ties, any gift, gratuity, favor, entertainment, or loan or any other thing of value, from any individual or organization which:

(i) Has, or is seeking to obtain, contractual or other business or financial relations with ACTION;

(ii) Has interests that may be substantially affected by the performance or nonperformance of the employee's official responsibility;

(iii) Is in any way attempting to affect the employee's exercise of his or her official responsibility; or

(iv) Conducts operations or activities that are regulated by ACTION.

(2) Paragraph (a)(1) of this section does not prohibit, even if the donor has dealings with ACTION:

(i) Acceptance of things of value from parents, children, or spouse if those relationships rather than the business of the donor is the motivating factor for the gift;

(ii) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of breakfast, luncheon, or dinner meeting or other meetings;

(iii) Solicitation and acceptance of loans from banks or other financial institutions to finance proper and usual activities of employees, such as home mortgage loans, solicited and accepted on customary terms;

(iv) Acceptance on behalf of minor dependents of fellowships, scholarships, or educational loans awarded on the basis of merit and/or need;

(v) Acceptance of awards for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(3) Regular or special employees need not return unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other things of nominal intrinsic value.

(b) *From other ACTION employees.* No employees in superior official positions may accept any gifts presented as contributions from employees receiving less salary than themselves. No employees shall solicit contributions from other employees for a gift to an employee in a superior official position, nor shall any employees make a donation as a gift to an employee in a superior official position. However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(c) *From foreign governments.* No regular employee may solicit or, without the consent of the Congress, receive any present, decoration, emolument, pecuniary favor, office, title, or any other gift from any foreign government. See 5 U.S.C. 7342; Executive Order 11320; and 22 CFR Part 3 (as added, 32 FR 6469).

(d) *Gifts to ACTION.* Gifts to the United States or to ACTION may be accepted in accordance with ACTION regulations.

(e) *Reimbursement for expenses.* Neither this section nor § 1201.735-310(a) precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part and for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits. Nor does it allow an employee to receive non-Government reimbursement of travel expenses for travel on official business under ACTION orders; but rather, such reimbursement, if any, should be made to ACTION and amounts received should be credited to its appropriation. If an employee receives accommodations, goods, or services in kind from a non-Government source, this item or items will be treated as a donation to ACTION and an appropriate reduction will be made in per diem or other travel expenses payable.

§ 1201.735-308 Economic and financial activities of employees abroad.

(a) *Prohibitions in any foreign country.* A U.S. citizen employee abroad is specifically prohibited from engaging in the activities listed below in any foreign country:

(1) Speculation in currency exchange;

(2) Transactions at exchange rates differing from local legally available rates, unless such transactions are duly authorized in advance by the agency;

(3) Sales to unauthorized persons (whether at cost or for a profit) of currency acquired at preferential rates through diplomatic or other restricted arrangements;

(4) Transactions which entail the use, without official sanction, of the diplomatic pouch;

(5) Transfers of funds on behalf of blocked nationals, or otherwise in violation of U.S. foreign funds and assets control;

(6) Independent and unsanctioned private transactions which involve an employee as an individual in violation of applicable control regulations of foreign governments;

(7) Acting as an intermediary in the transfer of private funds from persons in one country to persons in another country, including the United States;

(8) Permitting use of one's official title in any private business transactions or in advertisements for business purposes.

(b) *Prohibitions in country of assignment.* (1) A U.S. citizen employee shall not transact or be interested in any business or engage for profit in any profession or undertake other gainful employment in any country or countries to which he or she is assigned or detailed in his or her own name or through the agency of any other person.

(2) A U.S. citizen employee shall not invest in real estate or mortgages on properties located in his or her country of assignment. The purchase of a house and land for personal occupancy is not considered a violation of this paragraph.

(3) A U.S. citizen employee shall not invest money in bonds, shares, or stocks of commercial concerns headquartered in his or her country of assignment or conducting a substantial portion of business in such country. Such investments, if made prior to knowledge of assignment or detail to such country or countries, may be retained during such assignment or detail.

(4) A U.S. citizen employee shall not sell or dispose of personal property, including automobiles, at prices producing profits which result primarily from import privileges derived from his or her official status as an employee of the U.S. Government.

§ 1201.735-309 Information.

(a) Release of information to press.

(1) Regular or special employees shall not withhold information from the press or public unless that information is classified or administratively controlled (limited official use). All responses to requests for information from the press should be referred to the Office of Communications or regional communications officers as appropriate who will be responsible for all releases. Regular and special employees should be certain that information given to the press and public is accurate and complete.

(2) Any questions as to the classification or administrative control of information should be referred to the general counsel.

(3) No regular or special employee may record by electronic or other device any telephone or other conversation. No regular or special employee may listen in on any telephone conversation without the consent of all parties thereto.

(b) Disclosure and misuse of inside information. No employee may, directly or indirectly, disclose or use for his or her own benefit, or for the private benefit of another, inside information as described in paragraph (c) of this section. The use of such information by an employee is restricted to the proper performance of his or her official duties. The disclosure of such information is restricted to official ACTION channels unless disclosure is authorized by the Director, the Deputy Director, an Associate Director, or a Regional Director of

ACTION. In particular, no employee may:

(1) Engage in, directly or indirectly, a financial transaction as a result of or primarily relying on such information; or

(2) Publish any book or article, or deliver any speech or lecture, based on or using such information.

(c) Definition: The term "inside information" as used in this section means, generally, information obtained under Government authority which is not known by the general public and which could affect the rights or interests of the Government or of a non-Government organization or person. Such information includes information about ACTION operations or administration, and personnel which could influence someone's dealing with ACTION.

(d) This section is not intended to discourage the disclosure through proper channels of information which has been or should be made public, or which is by law to be made available to the public. Also, employees are encouraged to teach, lecture, and write, provided they do so in accordance with the provisions of this section and §§ 1201.735-301, and 1201.735-306.

§ 1201.735-310 Speeches; participation in conferences.

(a) *Fees and expenses.* (1) Although an employee may not accept a fee for his or her own use or benefit for making a speech, delivering a lecture, or participating in a discussion if the subject is ACTION or ACTION programs or if such services are part of the employee's official ACTION duties, the employee may suggest that the amount otherwise payable as a fee or honorarium be contributed to ACTION.

(2) When a meeting, discussion, etc., to which paragraph (a)(1) of this section refers takes place at a substantial distance from the employee's home he or she may accept reimbursement for the actual cost of transportation and necessary subsistence, or expenses, but in no case shall he or she receive any amount for personal benefit. Such reimbursements shall be reported by the employee to his or her immediate supervisors.

(3) An employee may accept fees for speeches, etc., dealing with subjects other than ACTION or ACTION programs when no official funds have been used in connection with his or her appearance and such activities do not interfere with the efficient performance of his or her duties.

(b) *Racial segregation.* No employee may participate for ACTION in conferences or speak for ACTION before audiences where any racial group has been segregated or excluded from the meeting, from any of the facilities or conferences, or from membership in the organization sponsoring the conference or meeting.

(1) When a request for ACTION speakers or participation is received under circumstances where segregation may be practiced, the Director of the Office of Communications shall make specific inquiry as to the practices of the organization before the request is filled.

(2) If the inviting organization shows a willingness to modify its practices for the occasion, ACTION will cooperate in such efforts.

(3) Exceptions to this paragraph may be made only by the Director, ACTION and in his or her discretion.

§ 1201.735-311 Partisan political activities.

(a) Prohibited activities: No employee may:

(1) Use his or her official authority or influence for the purpose of interfering with an election or affecting the result thereof; or

(2) Take any active part in partisan political management or in political campaigns, except as may be provided by or pursuant to statute 5 U.S.C. 7324.

(b) Intermittent employees: Persons employed on an irregular or occasional basis are subject to paragraph (a) of this section only while in active duty status and for the 24 hours of any day of actual employment.

(c) Excepted activities: Paragraph (a) of this section does not apply to:

(1) Nonpartisan campaigns and elections in which none of the candidates is to be nominated by or elected as representing a national or State politi-

cal party, such as most school board elections; or

(2) Political activities connected with questions of public interest which are not specifically identified with national or State political parties, such as constitutional amendments, referenda, and the like (5 U.S.C. 7326).

(d) Excepted communities: Paragraph (a) of this section does not apply to employees who are residents of certain communities. These communities, which have been designated by the Civil Service Commission (5 CFR 733.301), consist of a number of communities in suburban Washington, D.C., and a few communities elsewhere in which a majority of the voters are Government employees. Employees who are residents of the designated communities may be candidates for, or campaign for others who are candidates for, local office if they or the candidates for whom they are campaigning are running as independent candidates. An employee may hold local office only in accordance with §§ 1201.735-301 through 1201.735-306 relating to outside employment and associations.

(e) Special Government employees are subject to the statute for the 24 hours of each day on which they do any work for the Government.

(f) While regular employees may explain and support governmental programs that have been enacted into law, in exercising their official responsibilities they should not publicly support or oppose pending legislation, except in testimony required by the Congress.

(g) The Foreign Service Act generally prohibits any Foreign Service employee from:

(1) Corresponding in regard to the public affairs of any foreign government, except with the proper officers of the United States; and

(2) Recommending any person for employment in any position of trust or profit under the government of the country to which he or she is detailed or assigned.

§ 1201.735-312 Use of Government property.

A regular or special employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government for other than officially approved activities. All employees have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to them. By law, penalty envelopes may be used only for official Government mail.

§ 1201.735-313 Indebtedness.

ACTION considers the indebtedness of its employees to be a matter of their own concern and will not function as a collection agency. Nevertheless, a regular or special employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, or one imposed by law such as Federal, State or local taxes, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his or her employer. In the event of a dispute between an employee and an alleged creditor, this section does not require ACTION to determine the validity or amount of the disputed debt.

§ 1201.735-314 Gambling, betting, and lotteries.

A regular or special employee shall not participate, while on Government owned or leased property or while on duty for the Government in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 1201.735-315 Discrimination.

No regular or special employee may make inquiry concerning the race, political affiliation, or religious beliefs of any employee or applicant in connection with any personnel action and may not practice, threaten, or promise any action against or in favor of an employee or applicant for employment because or race, color, religion, sex, or national origin and in the competitive service on the basis of politics, marital status, or physical handicap.

§ 1201.735-316 Related statutes and regulations.

Each employee should be aware of the following related statutes and regulations:

(a) House Concurrent Resolution 175, 8th Congress, second session, 72A Stat. B12, the "Code of Ethics for Government Service."

(b) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) The prohibition against accepting honorariums of more than $2,000 per speech, appearance or article or aggregating more than $25,000 in any calendar year (2 U.S.C. 441i).

(e) The prohibitions against: (1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provisions relating to the habitual use of toxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuses of a Government vehicle (31 U.S.C. 638(a) (c)).

(h) The prohibition against the misuses of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against: (1) Embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code, and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against gifts to employee's superiors and the acceptance thereof (Rev. Stat. 1784, 5 U.S.C. 113).

(q) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, which is specifically applicable to special Government employees as well as to regular employees.

(r) The prohibitions against: (1) Accepting gifts from foreign governments; (2) engaging in business abroad; (3) corresponding on the affairs of foreign governments; and (4) discrimination on political, racial, or religious grounds contained in sections 1002 through 1005 of the Foreign Service Act of 1946, as amended.

(s) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(t) The prohibition against appointing or advocating the appointment of a relative to a position within the Agency (5 U.S.C. 3110).

Subpart D—Procedures for Submission by Employees and Review of Statements of Employment and Financial Interests

§ 1201.735-401 Submission of statements.

(a) (1) Regulations of the Civil Service Commission (5 CFR Part 735) require ACTION to adopt regulations providing for the submission of statements of employment and financial interests from certain regular ACTION employees and all special ACTION employees.

(2) All special employees and those regular employees designated in paragraph (b) of this section shall complete statements of employment and financial interests and submit them to

the Office of General Counsel not later than 5 days after their entrance on duty. The Director of Personnel Management shall be responsible for supplying all new employees with the necessary forms either prior to or on the first day of their employment.

(3) The statement of employment and financial interests shall include information on organizations with which the employee was associated during the 2 years prior to his or her employment by ACTION, as well as information about current associations. Special employees shall also indicate to the best of their knowledge which organizations listed currently on their form have contracts with or grants from ACTION, or are applying for ACTION contracts or grants. If any information required to be included on the statement, including holdings placed in trust, is not known to an employee but is known to another person, he or she is required to request that other person to submit information on his or her behalf.

(4) Changes in or additions to the information contained in a regular or special employee's statement must be reported in a supplementary statement as of June 30 each year. The Director of Personnel Management shall be responsible for insuring that such supplementary statements are submitted by June 30. If there are no changes or additions, a negative report is required. Notwithstanding the filing of the annual report required by this paragraph, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a conflict of interest and a violation of the conflict-of-interest provisions of section 208 of Title 18, United States Code, or the conflict-of-interest provisions of this part.

(5) In the case of temporary summer employees hired at FSR-7 or equivalent and below to perform duties other than those of an expert or consultant, the reporting requirement will be waived. It may also be waived by the Director of Personnel Management with respect to other appointments, except as experts or consultants, upon a finding that the duties of the position held by the special Government employee are of a nature and at such a level of responsibility that the reporting of employment and financial interests is not necessary to protect the integrity of the Government.

(6) Regular or special employees are not required to submit in a statement of employment and financial interests or supplementary statements any information about their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For this purpose, any organizations, doing work involving or potentially involving grants of money from or contracts with the Government are considered business enterprises and are required to be included in a regular or special employee's statement of employment and financial interests.

(7) The statements of employment and financial interests and supplementary statements required are in addition, and not in substitution for or in designation of, any similar requirement imposed by law, order, or regulation. The submission of a statement of supplementary statement by an employee does not permit him or her or any other person to participate in a matter in which his or her or other persons' participation is prohibited by law, order, or regulations.

(8) A regular employee who believes that his or her position has been improperly included under ACTION regulations as one requiring the submission of a statement of employment and financial interests shall be given an opportunity for review through ACTION's grievance procedures to determine whether the position has been improperly included.

(b) Statements shall be submitted by the following employees:

(1) Office of the Director:

(i) Director.

(ii) Deputy Director.

(iii) Executive Officer.

(iv) Special Assistants to Director and Deputy.

(v) Executive Assistants to Director and Deputy.

(2) Office of Domestic and Anti-Poverty Operations:

(i) Associate Director.

(ii) Deputy Associate Directors.

(iii) Special Assistants to Associate Director and to Deputy Associate Directors.

(iv) Supervisory program specialists.

(v) Program specialists and analysts.

(vi) Regional Directors.

(vii) Deputy Regional Directors.

(viii) Regional training chiefs.

(ix) Regional staff members with contracting and disbursing authority.

(x) Regional program operations officers.

(xi) State program directors.

(xii) State program officers.

(xiii) Deputy Directors, VISTA, and OAVP.

(3) Office of Administration and Finance:

(i) Assistant Director.

(ii) Deputy Assistant Director.

(iii) Director, Management and Organization.

(iv) Director, Administrative Services.

(v) Chief, Paperwork and Management.

(vi) Chief, Transportation.

(vii) Chief, Communications and Property.

(viii) Director, Accounting Division.

(ix) Chief, Fiscal Services.

(x) Chief, Accounting Operations.

(xi) Cashier.

(xii) Director, Personnel Management.

(xiii) Deputy Director, Personnel Management.

(xiv) Director, Health Services.

(xv) Director, Contracts and Grants Management.

(xvi) Chief, Procurement Division.

(xvii) Contract specialists, negotiators, and administrators.

(xviii) Purchasing agents.

(xix) Chief, Grants Division.

(xx) Senior Grants Administrator.

(xxi) Grants Administrator.

(xxii) Director, Computer Services.

(xxiii) Director Staff Training and Development.

(4) Office of Recruitment and Communications:

(i) Assistant Director.

(ii) Deputy Assistant Director.

(iii) Special Assistant to Assistant Director.

(iv) Director, Planning and Evaluation.

(v) Director, Recruitment Resources.

(vi) Director, Office of Communications.

(vii) Director, Public Affairs.

(viii) Director, Creative Services.

(5) Office of Voluntary Citizen Participation:

(i) Assistant Director.

(ii) Director program operations.

(iii) Director, International and Special Assistance.

(iv) Program specialists.

(v) Director, School Partnership program.

(6) Office of the General Counsel:

(i) General Counsel.

(ii) Deputy General Counsel.

(iii) Associate General Counsels.

(iv) Assistant General Counsels.

(7) Office of Policy and Planning:

(i) Assistant Director.

(ii) Deputy Assistant Director.

(iii) Special Projects Officer.

(iv) Director, Budget Division.

(v) Director, Policy Development.

(vi) Director, Evaluation.

(vii) Director, Planning.

(viii) Special Assistants to Assistant Director.

(ix) Program analysts.

(x) Policy development analysts.

(xi) Supervisory program specialists.

(xii) Evaluation specialists.

(8) Office of Legislative and Governmental Affairs:

(i) Assistant Director.

(9) Office of Compliance:

(i) Assistant Director.

(ii) Inspector General.

(iii) Auditors, inspectors, program operations analysts.

(iv) Director, Division of Equal Opportunity.

(10) Office of International Operations:

(i) Associate Director.

(ii) Deputy Associate Directors.

(iii) Director, Programing and Training.

(iv) Director, Multilateral and Special programs.

(v) Director, Special Services.

(vi) Director, Office of Management.

(vii) Director, Office of Peace Corps Volunteer Placement.

(viii) Regional Directors.

(ix) Country Directors and those overseas staff members to whom contracting or procurement authority has been duly delegated by the Country Director.

§ 1201.735-402 Review of statements.

(a) The Office of General Counsel shall review all statements and forward the names of all listed organizations to the Director of Contracts and Grants Management. In addition, if the information provided in the statement indicates on its face a real, apparent, or potential conflict of interest under §§ 1201.735-301 through 1201.735-305 of these standards, the General Counsel will review the situation with the particular employee. If the General Counsel and the employee are unable to resolve the conflict to the General Counsel's satisfaction, or if the employee wishes to request an exception to any of the above enumerated rules, the case will be referred to the Committee on Conflict of Interests. The Committee is authorized to recommend appropriate remedial action to the Director, who is authorized to take such action as may include, but is not limited to, changing assigned duties, requiring the employee or special employee to divest himself of a conflicting interest, taking disciplinary action, or disqualifying or accepting the self-disqualification of the employe or special employee for a particular assignment.

(b) The Office of Contracts and Grants Management shall maintain a list of all the organizations with which employees are or have been associated, as well as a list of all current grantees of and contractors with the Agency. When names of organizations with which new employees are or have been associated are submitted to the Grants office, they shall be checked against the list of current grantees or contractors. Similarly, before any new grants or contracts are awarded, the names of the potential grantees and contractors will be checked against the master list of organizations with which employees are or have been associated. Any real, apparent, or potential conflicts which come to light as a result of these cross checks will be referred to the Office of General Counsel for review. The General Counsel will proceed as in paragraph (a) of this section, referring the matter to the Committee on Conflict of Interests if necessary.

(c) Whenever an organization submits a proposal or application or otherwise indicates in writing its intent to apply for or seek a specific grant or contract, ACTION shall immediately forward a copy of the Agency standards of conduct to that organization and shall note which particular rules apply to potential grantees and contractors.

(d) Whenever a regular or special employee terminates his or her employment with ACTION, the Office of Personnel Management shall provide that employee with a copy of the rule which restricts a person's employment for a period of 1 year after leaving ACTION. Personnel shall also notify the Office of General Counsel when an employee terminates. One year after the date of termination, General Counsel will instruct the Office of Grants and Management to remove from the master list any organizations with which the terminated employee was associated. Three years after the date of termination, General Counsel will destroy the statement of employment and financial interests.

PART 1203—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.
1203.1 Purpose.
1203.2 Application of this part.
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1203.7 Conduct of investigations.
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1203.12 Effect on other regulations, forms, and instructions.

APPENDIX A—ACTIVITIES TO WHICH THIS PART APPLIES

APPENDIX B—PROGRAMS TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1.

Source: 39 FR 27322, July 26, 1974, unless otherwise noted.

§ 1203.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as title VI), to the end that a person in the United States shall not, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under a program or activity receiving Federal financial assistance from ACTION.

§ 1203.2 Application of this part.

(a) This part applies to each program for which Federal financial assistance is authorized under a law administered by ACTION, including the federally assisted programs listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under a program after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under a program before the effective date of this part, except when the assistance was subject to the title VI regulations of an agency whose responsibilities are now exercised by ACTION;

(3) Assistance to any individual who is the ultimate beneficiary under a program; or

(4) Employment practices, under a program, of an employer, employment agency, or labor organization, except to the extent described in § 1203.4(c).

The fact that a program is not listed in Appendix A to this part does not mean, if title VI is otherwise applicable, that the program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to Appendix A to this part.

(b) In a program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under that property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part extends to a facility located wholly or in part in that space.

§ 1203.3 Definitions.

Unless the context requires otherwise, in this part:

(a) "Applicant" means a person who submits an application, request, or plan required to be approved by ACTION, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means that application, request, or plan.

(b) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(c) "Federal financial assistance" includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in the property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale or lease to the recipient; and

(5) A Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) "Primary recipient" means a recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) "Program" includes a program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training or other services whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance are deemed to include a service, financial aid, or other benefits provided:

(1) With the aid of Federal financial assistance,

(2) With the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet the matching requirements or other conditions which must be met in order to receive the Federal financial assistance, or

(3) In or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) "Recipient" may mean any State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual in any State, the District of Columbia, the Commonwealth of Puerto Rico, or territory or possession of the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but the term does not include any ultimate beneficiary under a program.

(g) "Director" means the Director of ACTION or any person to whom he has delegated his authority in the matter concerned.

§ 1203.4 Discrimination prohibited.

(a) *General.* A person in the United States shall not, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, a program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under a program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin—

(i) Deny a person a service, financial aid, or other benefit provided under the program;

(ii) Provide a service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of a service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of an advantage or privilege enjoyed by others receiving a service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies an admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided a service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under a program or the class of persons to whom, or the situations in which, the services, financial aid, other benefits, or facilities will be provided under a program, or the class of persons to be afforded an opportunity to participate in a program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially im-

pairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(4)(i) In administering a program regarding which the recipient had previously discriminated against persons on the ground of race, color, or national origin, the recipient shall take affirmative action tc overcome the effects of prior discrimination.

(ii) Even in the absence of prior discrimination a recipient in administering a program may take affirmative action to overcome the effect of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) When a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under the program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). A recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to race, color, or national origin. The requirements applicable to construction employment under a program are those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by ACTION which have as a primary objective the providing of employment include those set forth in Appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program to which this part applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI of this part.

§ 1203.5 Assurances required.

(a) *General.* (1) An application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (d) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of Federal financial assistance pursuant to the application, contain or be accompanied by, assurances that the program will be conducted or the facility operated in compliance with the requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of these assurances. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurances shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In other cases, the assurances obligate the recipient for the period during which the Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurances shall extend to the entire facility and to the facilities operated in connection therewith. ACTION shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. The assurances shall include provisions which give the United States the right to seek judicial enforcement.

(2) When Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose involving the provision of similar services or benefits. When no transfer of property of interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include a covenant in any subsequent transfer of the property. When the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by ACTION to revert title to the property in the event of a breach of the covenant where, in the discretion of ACTION, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on property for the purposes for which the property was transferred, ACTION may agree, on request of the transferee and if necessary to accomplish the financing, and on conditions as he deems appropriate, to subordinate a right of reversion to the lien of a mortgage or other encumbrance.

(b) *Assurances from Government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible ACTION official if the applicant establishes, to the satisfaction of the responsible ACTION official, that the practices in other agencies or parts or programs of the governmental unit will in no way affect:

(1) Its practices in the program for which Federal financial assistance is sought, or

(2) The beneficiaries of or participants in or persons affected by the program, or

(3) Full compliance with this part as respects the program.

(c) *Assurance from academic and other institutions.* (1) In the case of an application for Federal financial assistance by an academic institution, the assurance required by this section extends to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility unless the applicant establishes,

to the satisfaction of the responsible ACTION official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of or participants in the program. If the assistance sought is for the construction of a facility or part of a facility, the assurance shall extend to the entire facility and to facilities operated in connection therewith.

(d) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Appendix A to this part) shall as a condition to its approval and the extension of Federal financial assistance pursuant to the application:

(1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with the requirements imposed by or pursuant to this part, and

(2) Provide or be accompanied by provision for methods of administration for the program as are found by ACTION to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under the program will comply with the requirements imposed by or pursuant to this part.

(Approved by the Office of Management and Budget under control number 3001-0016, paragraph (a)(1))

[39 FR 27322, July 26, 1974, as amended at 47 FR 3553, Jan. 26, 1982]

§ 1203.6 Compliance information.

(a) *Cooperation and assistance.* ACTION, to the fullest extent practicable, shall seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep records and submit to ACTION timely, complete, and accurate compliance reports at the times, and in the form and containing the information ACTION may determine necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of a program under which a primary recipient extends Federal financial assistance to other recipients, the other recipients shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general, recipients should have available for ACTION racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by ACTION during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. When information required of a recipient is in the exclusive possession of another agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons the information regarding the provisions of this part and its applicability to the program under which the recipient received Federal financial assistance, and make this information available to them in the manner, as ACTION finds necessary, to apprise the persons of the protections against discrimination assured them by title VI and this part.

§ 1203.7 Conduct of investigations.

(a) *Periodic compliance reviews.* ACTION may from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with ACTION a written complaint. A complaint shall be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by ACTION.

(c) *Investigations.* ACTION will make a prompt investigation whenever a compliance review, report, complaint, or other information indicates a possible failure to comply with this part. The investigation will include, when appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, ACTION will so inform the recipient and the matter will be resolved by voluntary means whenever possible. If it has been determined that the matter cannot be resolved by voluntary means, action will be taken as provided for in § 1203.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, ACTION will so inform, in writing, the recipient and the complainant, if any.

(e) *Intimidatory or retaliatory acts prohibited.* A recipient or other person shall not intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with a right or privilege secured by section 601 of title VI of this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential, except to the extent necessary to carry out the purposes of this part, including the conduct of an investigation, hearing, or judicial proceeding arising thereunder.

§ 1203.8 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by other means authorized by law.

(2) Other means may include, but are not limited to: (i) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under a law of the United States (including other titles of the Civil Rights Act of 1964) or an assurance or other contractual undertaking, and

(ii) An applicable proceeding under State or local law.

(b) *Noncompliance with § 1203.5.* If an applicant fails or refuses to furnish an assurance required under § 1203.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. ACTION shall not be required to provide assistance in that case during the pendency of the administrative proceedings under this paragraph. Subject, however, to § 1203.12, ACTION shall continue assistance during the pendency of the proceedings where the assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* An order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall not become effective until—

(1) ACTION has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by informal voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Director pursuant to § 1203.10(e); and

(4) The expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for the action.

An action to suspend or terminate or refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been so found.

(d) *Other means authorized by law.* An action to effect compliance with title VI by other means authorized by law shall not be taken by ACTION until—

(1) ACTION has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of a notice to the recipient or person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take corrective action as may be appropriate.

§ 1203.9 Hearings.

(a) *Opportunity for hearing.* When an opportunity for a hearing is required by § 1203.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of notice within which the applicant or recipient may request of ACTION that the matter be scheduled for hearing or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is deemed to be a waiver of the right to a hearing under section 602 of title VI and § 1203.8(c) and consent to the making of a decision on the basis of the information available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of ACTION in Washington, D.C., at a time fixed by ACTION unless it determines that the convenience of the applicant or recipient or of ACTION requires that another place be selected. Hearings shall be held before the Director, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and ACTION have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and an administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with the rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both ACTION and the applicant or recipient are entitled to introduce relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where determined reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. Documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. Decisions shall be based on the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI, ACTION may, by agreement with the other departments or agencies, when applicable, provide for the conduct of consolidated or joint hearings, and for the application to these hearings of rules or procedures not inconsistent with this part. Final decisions in these cases, insofar as this regulation is concerned, shall be made in accordance with § 1203.10.

§ 1203.10 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Director for a final decision, and a copy of the initial decision or certification shall be mailed to the applicant or recipient. When the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of a notice of initial decision, file with the Director his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Director may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. On the filing of the exceptions or of notice of review, the Director shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision, subject to paragraph (e) of this section, shall constitute the final decision of the Director.

(b) *Decisions on record or review by the Director.* When a record is certified to the Director for decision or the Director reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or when the Director conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of the recipient's contentions, and a written copy of the final decision of the Director will be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived pursuant to § 1203.9, a decision shall be made by ACTION on the record and a written copy of the decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Director shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by ACTION.* A final decision by an official of ACTION other than by the Director, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or title VI, shall promptly be transmitted to the Director, who may approve the decision, vacate it, or remit or mitigate a sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain the terms, conditions, and other provisions as are consistent with and will effectuate the purposes of title VI and this part, including provisions designed to assure that Federal financial assistance will not thereafter be extended under the programs to the applicant or recipient determined by the decision to be in default in its performance of an assurance given by it under this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies ACTION that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of the order for eligibility, or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) An applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request ACTION to restore fully its eligibility to receive Federal financial assistance. A request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If ACTION determines that those requirements have been satisfied, it shall restore the eligibility.

(3) If ACTION denies a request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes ACTION is in error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record in accordance with the rules or procedures issued by ACTION. The applicant or recipient shall be restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section remain in effect.

§ 1203.11 Judicial review.

Action taken pursuant to section 602 of title VI is subject to judicial review as provided in section 603 of title VI.

§ 1203.12 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* Regulations, orders, or like directions issued before the effective date of this part by ACTION which impose requirements designed to prohibit discrimination against individuals on the ground of race, color, or national origin under a program to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to an applicant for or recipient of assistance under a program for failure to comply with the requirements, are superseded to the extent that discrimination is prohibited by this part, except that nothing in this part relieves a person of an obligation assumed or imposed under a superseded regulation, order, instruction, or like direction, before the effective date of this part. This part does not supersede any of the following (including future amendments thereof):

(1) Executive Order 11246 (3 CFR, 1965 Supp.) and regulations issued there under or

(2) Any other orders, regulations, or instructions, insofar as these orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in a program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* ACTION shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies, and for which it is responsible.

(c) *Supervision and coordination.* ACTION may from time to time assign to officials of ACTION, or to officials of other departments or agencies of the Government with the consent of the departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI and this part (other than responsibilities for final decision as provided in § 1203.10), including the achievement of effective coordination and maximum uniformity within ACTION and within the executive branch in the application of title VI and this part to similar programs and in similar situations. An action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by ACTION.

APPENDIX A—PROGRAMS TO WHICH THIS PART APPLIES

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).

2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

APPENDIX B—PROGRAMS TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).

2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

PART 1204—OFFICIAL SEAL

Sec.
1204.1 Authority.
1204.2 Description.
1204.3 Custody and authorization to affix.

AUTHORITY: Sec. 402, Pub. L. 93-113, 87 Stat. 407 (42 U.S.C. 5042).

SOURCE: 38 FR 34118, Dec. 11, 1973, unless otherwise noted.

§ 1204.1 Authority.

Pursuant to section 402(9) of Pub. L. 93-113, the ACTION official seal and design thereof which accompanies and is made part of this document, is hereby adopted and approved, and shall be judicially noticed.

[52 FR 20714, June 3, 1987]

§ 1204.2 Description.

The official seal of ACTION is described as follows:

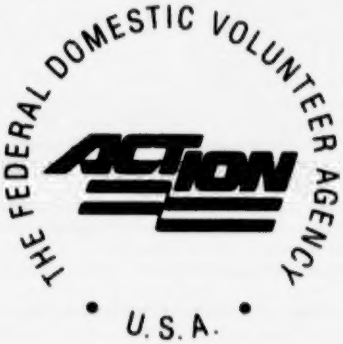
(a) The words "The Federal Domestic Volunteer Agency USA" are in blue capital letters and form the outer circle of the seal.

(b) Within the circle of letters, on a field of white, appears the logotype word "ACTION" in blue, capital letters and in Italic type.

(c) The logotype word "ACTION" is split; "ACT" on a higher level and "ION" drops down to a slightly lower level.

(d) Two red bars, also split on two levels, underline the logotype word "ACTION."

The official seal of ACTION is modified when reproduced in black and white and when embossed, as it appears below.


THE FEDERAL DOMESTIC VOLUNTEER AGENCY
ACTION
U.S.A.

[52 FR 20714, June 3, 1987]

§ 1204.3 Custody and authorization to affix.

(a) The seal is the official emblem of ACTION and its use is therefore permitted only as provided in this part.

(b) The seal shall be kept in the custody of the General Counsel, or any other person he authorizes, and should be affixed by him, the Director or the Deputy Director to all commissions of officials of ACTION, and used to authenticate records of ACTION and for other official purposes. The General Counsel may redelegate and authorize redelegations of, this authority.

(c) The Director shall designate and prescribe by internal written delegations and policies the use of the seal for other publication and display purposes and those ACTION officials authorized to affix the seal for these purposes.

(d) Use by any person or organization outside of the Agency may be made only with the Agency's prior written approval. Such request must be made in writing to the General Counsel.

PART 1206—GRANTS AND CONTRACTS—SUSPENSION AND TERMINATION AND DENIAL OF APPLICATION FOR REFUNDING

Subpart A—Suspension and Termination of Assistance

Sec.

1206.1-1 Purpose and scope.
1206.1-2 Application of this part.
1206.1-3 Definitions.
1206.1-4 Suspension.
1206.1-5 Termination.
1206.1-6 Time and place of termination hearings.
1206.1-7 Termination hearing procedures.
1206.1-8 Decisions and notices regarding termination.
1206.1-9 Right to counsel; travel expenses.
1206.1-10 Modification of procedures by consent.
1206.1-11 Other remedies.

Subpart B—Denial of Application for Refunding

1206.2-1 Applicability of this subpart.
1206.2-2 Purpose.
1206.2-3 Definitions.
1206.2-4 Procedures.
1206.2-5 Right to counsel.

AUTHORITY: 42 U.S.C. 4951 et seq.; Pub. L. 93-113, as amended by Pub. L. 98-288.

SOURCE: 39 FR 1996, Jan. 16, 1974, unless otherwise noted.

Subpart A—Suspension and Termination of Assistance

§ 1206.1-1 Purpose and scope.

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance provided by ACTION pursuant to various sections of titles I, II and III of the Domestic Volunteer Service Act of 1973, 87 Stat. 394, Pub. L. 93-113, (hereinafter the Act) because of a material failure of a recipient to comply with the terms and conditions of any grant or contract providing assistance under these sections of the Act, including applicable laws, regulations, issued program guidelines, instructions, grant conditions or approved work programs.

(b) However, this subpart shall not apply to any administrative action of the ACTION Agency based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964 and sections 417 (a) and (b) of Pub. L. 93-113 relating to nondiscrimination. In the case of any such violation or alleged violation other provisions of this chapter shall apply.

§ 1206.1-2 Application of this part.

This subpart applies to programs authorized under titles I, II, and III of the Act.

§ 1206.1-3 Definitions.

As used in this subpart—

(a) The terms "ACTION" or "ACTION Agency" include each Regional Office.

(b) The term "Director" means the Director of the ACTION Agency.

(c) The term "responsible ACTION official" means the Director and Deputy Director of ACTION, appropriate Regional Director and any ACTION headquarters or regional office official who is authorized to make the grant of assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in § 1206.1-4, the term "responsible ACTION official" shall also include a designee of an ACTION official who is authorized to make the grant of assistance in question.

(d) The term "assistance" means assistance under titles I, II and III of the Act in the form of grants or contracts involving Federal funds for the administration of which ACTION has primary responsibility.

(e) The term "recipient" means a public or private agency, institution or organization or a State or other political jurisdiction which has received assistance under title I, II, or III of the Act, but does not include individuals who ultimately receive benefits under any program of assistance or volunteers participating in any program

(f) The term "agency" means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out of the development, conduct and administration of all or part of a project assisted under titles I, II and III.

(g) The term "party" in the case of a termination hearing means ACTION, the recipient concerned, and any other agency or organization which has a right or which has been granted permission by the presiding officer to participate in a hearing concerning termination of assistance to the recipient pursuant to § 1206.1-5(e).

(h) The term "termination" means any action permanently terminating or curtailing assistance to all or any part of a program prior to the time that such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

(i) The term "suspension" means any action temporarily suspending or curtailing assistance in whole or in part, to all or any part of a program, prior to the time that such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

§ 1206.1-4 Suspension.

(a) *General.* The responsible ACTION official may suspend assistance to a recipient in whole or in part for a material failure or threatened material failure to comply with any requirement stated in § 1206.1-1. Such suspension shall be pursuant to notice and opportunity to show cause why assistance should not be suspended as provided in paragraph (b) of this section. However, in emergency cases, where the responsible ACTION official determines summary action is appropriate, the alternative summary procedure of paragraph (c) of this section shall be followed.

(b) *Suspension on notice.* (1) Except as provided in paragraph (c) of this section, the procedure for suspension shall be on notice of intent to suspend as hereinafter provided.

(2) The responsible ACTION official shall notify the recipient by letter or by telegram that ACTION intends to suspend assistance in whole or in part unless good cause is shown why assistance should not be suspended. In such letter or telegram the responsible ACTION official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(3) The responsible ACTION official shall also inform the recipient of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the recipient may respond and attempt to show why such suspension should not occur. The period of time within which the recipient may submit such written material or request the informal meeting shall be established by the responsible ACTION official in the notice of intent to suspend. However, in no event shall the period of time within which the recipient must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend assistance has been sent. If the recipient requests a meeting, the responsible ACTION official shall fix a time and place for the meeting, which shall not be less than 5 days after the recipient's request is received by ACTION.

(4) In lieu of the provisions of paragraph (b)(3) of this section dealing with the right of the recipient to request an informal meeting, the responsible ACTION official may on his own

initiative establish a time and place for such a meeting and notify the recipient in writing or by telegram. However, in no event shall such a meeting be scheduled less than seven days after the notice of intent to suspend assistance is sent to the recipient.

(5) The responsible ACTION official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the recipient in writing or by telegram of any such extension.

(6) At the time the responsible ACTION official sends the notification referred to in paragraphs (b) (2), (3), and (4) of this section to the recipient, he shall also send a copy of it to any agency whose activities or failures to act have substantially contributed to the proposed suspension, and shall inform such agency that it is entitled to submit written material or to participate in the informal meeting referred to in paragraphs (b) (3) and (4) of this section. In addition the responsible ACTION official may in his discretion give such notice to any other agency.

(7) Within 3 days of receipt of the notice referred to in paragraphs (b) (2), (3), and (4) of this section, the recipient shall send a copy of such notice and a copy of these regulations to all agencies which would be financially affected by the proposed suspension action. Any agency that wishes to submit written material may do so within the time stated in the notice. Any agency that wishes to participate in the informal meeting with the responsible ACTION official contemplated herein may request permission to do so from the responsible ACTION official, who may in his discretion grant or deny such permission. In acting upon any such request from an agency, the responsible ACTION official shall take into account the effect of the proposed suspension on the particular agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the agency requesting such permission appear to be adequately represented by other participants.

(8) In the notice of intent to suspend assistance the responsible ACTION official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(9) The responsible ACTION official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (b) (3) and (4) of this section as well as any showing that the recipient has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible ACTION official concludes the recipient has failed to show cause why assistance should not be suspended, he may suspend assistance in whole or in part and under such terms and conditions as he shall specify.

(10) Notice of such suspension shall be promptly transmitted to the recipient and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with § 1206.1-5, or unless the responsible ACTION official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(11) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible ACTION official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the recipient has obligated them by contract or otherwise to an agency.

NOTE: Willful misapplication of funds may violate Federal criminal statutes.

(12) The responsible ACTION official may in his discretion modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the recipient had adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may, in the discretion of the responsible ACTION official be reimposed with or without further proceedings: *Provided however*, That the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1-5 or unless the responsible ACTION official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(c) *Summary suspension.* (1) The responsible ACTION official may suspend assistance without the prior notice and opportunity to show cause provided in paragraph (b) of this section if he determines in his discretion that immediate suspension is necessary because of a serious risk of: (i) Substantial injury to or loss of project funds or property, or

(ii) Violation of a Federal, State or local criminal statute, or

(iii) Violation of section 403 of Pub. L. 93-113 or of ACTION rules, regulations, guidelines and instructions, published in accordance with Section 420 of Pub. L. 93-113, implementing this section of the Act, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the recipient by letter or by telegram, shall become effective upon delivery to the recipient, and shall specifically advise the recipient of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the recipient to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a recipient solely because the recipient obligated them by contract or otherwise to an agency. (See note under paragraph (b)(11) of this section.)

(3) In the notice of summary suspension the responsible ACTION official shall advise the recipient that it may request ACTION to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the recipient requests such an opportunity, the responsible ACTION official shall immediately inform the recipient in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the recipient hold an informal meeting at which the recipient may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible ACTION official may proceed to initiate termination proceedings at any time even though assistance to the recipient has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible ACTION official shall nevertheless afford the recipient, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Copies of the notice of summary suspension shall be furnished by the recipient to agencies in the same manner as notices of intent to suspend as set forth in paragraphs (b) (6), (7), and (8) of this section. Agencies may submit written material to the responsible ACTION official or to participate in the informal meeting as in the case of intended suspension proceedings set forth in paragraphs (b) (6) and (7) of this section.

(5) The effective period of a summary suspension of assistance may not

exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1-5, or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the recipient, in accordance with paragraph (c)(3) of this section, requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the recipient requests an opportunity to show cause why a summary suspension action should be rescinded the suspension of assistance shall continue in effect until the recipient has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting referred to in paragraph (c)(3) of this section. If the responsible ACTION official concludes, after considering all material submitted to him, that the recipient has failed to show cause why the suspension should be rescinded, the responsible ACTION official may continue the suspension in effect for an additional 7 days: *Provided however,* That if termination proceedings are initiated, the summary suspension of assistance shall remain in full force and effect until all termination proceedings have been fully concluded.

§ 1206.1-5 Termination.

(a) If the responsible ACTION official believes that an alleged failure to comply with any requirement stated in § 1206.1-1 may be sufficiently serious to warrant termination of assistance, whether or not assistance has been suspended, he shall so notify the recipient by letter or telegram. The notice shall state that there appear to be grounds which warrant terminating the assistance and shall set forth the specific reasons therefor. If the reasons result in whole or substantial part from the activities of an agency other than the grantee, the notice shall identify that agency. The notice shall also advise the recipient that the matter has been set down for hearing at a stated time and place, in accordance with § 1206.1-6. In the alternative the notice shall advise the recipient of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the recipient may request such a hearing.

(b) Termination hearings shall be conducted in accordance with the provision of §§ 1206.1-7 and 1206.1-8. They shall be scheduled for the earliest practicable date, but not later than 30 days after a recipient has requested such a hearing in writing or by telegram. Consideration shall be given to a request by a recipient to advance or postpone the date of a hearing scheduled by ACTION. Any such hearing shall afford the recipient a full and fair opportunity to demonstrate that it is in compliance with requirements specified in § 1206.1-1. In any termination hearing, ACTION shall have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a recipient to take action required by law, regulation, or other requirement specified in § 1206.1-1, the recipient shall have the burden of proving that such action was timely taken.

(c) If a recipient requests ACTION to hold a hearing in accordance with paragraph (a) of this section, it shall send a copy of its request for such a hearing to all agencies which would be financially affected by the termination of assistance and to each agency identified in the notice pursuant to paragraph (a) of this section. This material shall be sent to these agencies at the same time the recipient's request is made to ACTION. The recipient shall promptly send ACTION a list of the agencies to which it has sent such material and the date on which it was sent.

(d) If the responsible ACTION official pursuant to paragraph (a) of this section informs a recipient that a proposed termination action has been set for hearing, the recipient shall within 5 days of its receipt of this notice send a copy of it to all agencies which would be financially affected by the termination and to each agency identified in the notice pursuant to paragraph (a) of this section. The recipient shall send the responsible ACTION official a list of all agencies notified and the date of notification.

(e) If the responsible ACTION official has initiated termination proceedings because of the activities of an agency, that agency may participate in the hearing as a matter of right. Any other agency, person, or organization that wishes to participate in the hearing may, in accordance with § 1206.1-7(d), request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACTION and the recipient, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any measure taken thereafter by ACTION pursuant to this part shall be fully binding upon the recipient and all agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing by notice to the responsible ACTION official in writing and submit written information and argument for the record. Such material shall be submitted to the responsible ACTION official within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACTION.

(h) The responsible ACTION official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

§ 1206.1-6 Time and place of termination hearings.

The termination hearing shall be held in Washington, D.C., or in the appropriate Regional Office, at a time and place fixed by the responsible ACTION official unless he determines that the convenience of ACTION, or of the parties or their representatives, requires that another place be selected.

§ 1206.1-7 Termination hearing procedures.

(a) *General.* The termination hearing, decision, and any review thereof shall be conducted in accordance with the rules of procedure set forth in this section and §§ 1206.1-8 and 1206.1-9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible ACTION official or, at the discretion of the responsible ACTION official, an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(2) After the notice described in paragraph (f) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on written notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of ACTION or the appropriate Regional Counsel: *Provided,* That the attorney designated to assist him has not represented ACTION or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) *Presentation of evidence.* Both ACTION and the recipient are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (f) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) *Participation.* (1) In addition to ACTION, the recipient, and any agency which has a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(2) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of suspension or proposed termination has been received by the recipient, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(3) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the recipient, and ACTION, and, in the case of denial, a brief statement of the reasons therefor: *Provided however,* That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(4) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(e) *Filing.* All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(f) *Notice.* The responsible ACTION official shall send the recipient and any other party a written notice which states the time, place, nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the ACTION requirements which it is contended the recipient has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(g) *Notice of intention to appear.* The recipient and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to ACTION of its intention to appear at the hearing 3 days before it is scheduled to occur. Failing to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(h) *Form and date of service.* All papers and documents filed or sent to party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: *Provided however,* That the effective date of the notice that there appear to be grounds which warrant terminating assistance shall be the date of its delivery or attempted delivery at the recipient's last known address as reflected in the records of ACTION.

(i) *Prehearing conferences.* Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b)(2) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(j) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and crossexamination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcription shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(k) *Depositions.* If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(l) *Official notice.* Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific date issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of ACTION. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(m) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of § 1206.1-8(a).

§ 1206.1-8 Decisions and notices regarding termination.

(a) Each decision of a presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to § 1206.1-7(m). Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the recipient has failed to comply.

(b) The decision of the presiding officer may provide for continued suspension or termination of assistance to the recipient in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(c) If the hearing is held by an independent hearing examiner rather than by the responsible ACTION official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible ACTION official his written exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible ACTION official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own written decision thereof, including the reasons therefore. The decision of the responsible ACTION official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a decision shall be made by the responsible ACTION official and a written copy of the final decision of the responsible ACTION official shall be given to the recipient.

(e) The recipient may request the Director to review a final decision by the responsible ACTION official which provides for the termination of assistance. Such a request must be made in writing within 15 days after the recipient has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the recipient requests such a review, the Director or his designee shall consider the reasons stated by the recipient for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible ACTION official or remand the matter to the responsible ACTION official for further hearing or consideration. The decision of the responsible ACTION official will be given great weight by the Director or his designee during the review. During the course of his review the Director or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Direct or his designee assistance shall remain suspended under the terms and conditions specified by the responsible ACTION official, unless the responsible ACTION official or the Director or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the Director or his designee within 30 days of receipt by the Director of the recipient's request. The Director or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

§ 1206.1-9 Right to counsel; travel expenses.

In all proceedings under this subpart, whether formal or informal, the recipient and ACTION shall have the right to be represented by counsel or other authorized representatives. If the recipient and any agency which has a right to participate in an informal meeting pursuant to § 1206.1-4 or a termination hearing pursuant to § 1206.1-7 do not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Boards of Directors of such recipient and agency will be authorized to designate an attorney to represent their organizations at any such show cause proceeding or termination hearing and to transfer sufficient funds from the Federal grant monies they have received for the project to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the prior express written approval of ACTION. Travel and per diem expenses may be paid to such attorney only in accordance with the policies set forth in the Standard Government Travel Regulations and in §§ 1206.3-1 and 1206.3-6 of this chapter. The Boards of Directors of the recipient or any agency which has a right to participate in an informal meeting pursuant to § 1206.1-4 or a termination hearing pursuant to § 1206.1-7 will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from Federal grant or contract monies. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Travel Regulations and in §§ 1206.3-1 and 1206.3-6 of this chapter.

§ 1206.1-10 Modification of procedures by consent.

The responsible ACTION official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this subpart with the consent of the recipient and, in the case of a termination hearing, with the consent of all agencies that have a right to participate in the hearing pursuant to § 1206.1-5(e). Such consent must be in writing or be recorded in the hearing transcript.

§ 1206.1-11 Other remedies.

The procedures established by this subpart shall not preclude ACTION from pursuing any other remedies authorized by law.

Subpart B—Denial of Application for Refunding

SOURCE: 47 FR 5719, Feb. 8, 1982, unless otherwise noted.

§ 1206.2-1 Applicability of this subpart.

This subpart applies to grantees and contractors receiving financial assistance and to sponsors who receive volunteers under the Domestic Volunteer

Service Act of 1973, as amended, 42 U.S.C. 4951 *et seq.* The procedures in this subpart do not apply to review of applications for the following:

(a) University Year for ACTION projects which have received federal funds for five years;

(b) Mini-grants;

(c) Other projects for which specific time limits with respect to federal assistance are established in the original notice of grant award or other document providing assistance, where the specified time limit has been reached; and

(d) VISTA project extensions of less than six months.

§ 1206.2-2 Purpose.

This subpart establishes rules and review procedures for the denial of a current recipient's application for refunding.

§ 1206.2-3 Definitions.

As used in this subpart—"ACTION," "Director," and "recipient" shall be defined in accordance with § 1206.1-3.

"Financial assistance" and "assistance" include the services of volunteers supported in whole or in part with ACTION funds.

"Program account" means assistance provided by ACTION to support a particular program activity; for example, VISTA, Foster Grandparent Program, Senior Companion Program and Retired Senior Volunteer Program.

"Refunding" includes renewal of an application for the assignment of volunteers.

§ 1206.2-4 Procedures.

(a) The procedures set forth in paragraphs (b) through (g) of this section shall apply only where an application for refunding submitted by a current recipient is rejected or is reduced to 80 percent or less of the applied-for level of funding or the recipient's current level of operations, whichever is less. It is further a condition for application of these procedures that the rejection or reduction be based on circumstances related to the particular grant or contract. These procedures do not apply to reductions based on legislative requirements, or on general policy or in instances where, regardless of a recipient's current level of operations, its application for refunding is not reduced by 20 percent or more. The fact that the basis for rejecting an application may also be a basis for termination under subpart A of this part shall not prevent the use of this subpart to the exclusion of the procedures in Subpart A.

(b) Before rejecting an application of a recipient for refunding ACTION shall notify the recipient of its intention, in writing, at least 75 days before the end of the recipient's current program year or grant budget period. The notice shall inform the recipient that a tentative decision has been made to reject or reduce an application for refunding. The notice shall state the reasons for the tentative decision to which the recipient shall address itself if it wishes to make a presentation as described in paragraphs (c) and (d) of this section.

(c) If the notice of tentative decision is based on any reasons, other than those described in paragraph (d) of this section, including, but not limited to, situations in which the recipient has ineffectively managed Agency resources or substantially failed to comply with agency policy and overall objectives under a contract or grant agreement with the Agency, the recipient shall be informed in the notice, of the opportunity to submit written material and to meet informally with an ACTION official to show cause why its application for refunding should not be rejected or reduced. If the recipient requests an informal meeting, such meeting shall be held on a date specified by ACTION. However, the meeting may not, without the consent of the recipient, be scheduled sooner than 14 days, nor more than 30 days, after ACTION has mailed the notice to the recipient. If the recipient requests an informal meeting, the meeting shall be scheduled by ACTION as soon as possible after receipt of the request. The official who shall conduct this meeting shall be an ACTION official who is authorized to finally approve or make the grant of assistance in question, or his designee.

(d) If the notice of tentative decision is based upon a specific charge of failure to comply with the terms and conditions of the grant or contract, alleging wrongdoing on the part of the recipient, the notice shall offer the recipient an opportunity for an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such hearing officer shall be limited to conducting the hearing and offering recommendations. ACTION will retain all authority to make the final determination as to whether the application should be finally rejected or reduced. If the recipient requests an informal hearing, such hearing shall be held at a date specified by ACTION. However, such hearing may not, without the consent of the recipient, be scheduled sooner than 14 days nor more than 30 days after ACTION has mailed the notice to the recipient.

(e) In the selection of a hearing official and the location of either an informal meeting or hearing, the Agency, while mindful of considerations of the recipient, will take care to insure that costs are kept to a minimum. The informal meeting or hearing shall be held in the city or county in which the recipient is located, in the appropriate Regional Office, or another appropriate location. Within the limits stated in the preceding sentence, the decision as to where the meeting shall be held will be made by ACTION, after weighing the convenience factors of the recipient. For the convenience of the recipient, ACTION will pay the reasonable travel expenses for up to two representatives of the recipient, if requested.

(f) The recipient shall be informed of the final Agency decision on refunding and the basis for the decision by the deciding official.

(g) If the recipient's budget period expires prior to the final decision by the deciding official, the recipient's authority to continue program operations shall be extended until such decision is made and communicated to the recipient. If a volunteer's term of service expires after receipt by a sponsor of a tentative decision not to refund a project, the period of service of the volunteer may be similarly extended. No volunteers may be reenrolled for a full 12-month term, or new volunteers enrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, ACTION and the recipient shall provide, subject to the availability of funds, operating funds at the same levels as in the previous budget period to continue program operations.

[50 FR 42025, Oct. 17, 1985]

§ 1206.2-5 Right to counsel.

In all proceedings under this subpart, whether formal or informal, the recipient and ACTION shall have the right to be represented by counsel or other authorized representatives, at their own expense.

PART 1207—SENIOR COMPANION PROGRAM

Subpart A—General

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Subpart D—Non-ACTION Funded Projects

1207.4-1 Memorandum of agreement.

Subpart E—Sanctions and Legal Representation

1207.5-1 Special limitations.
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AUTHORITY: Secs. 211(d), (e); 212, 213, 221, 222, 223, 402(14) and 420 of Pub. L. 93-113, 87 Stat. 402, 403, 404, 407 and 414, sec. 213

of Pub. L. 97-35, 97 Stat. 487, 42 U.S.C. 5011 (b), (d) and (e); 5012, 5021, 5022, 5023, 5042(14), 5060 and 5013.

SOURCE: 48 FR 26803, June 10, 1983, unless otherwise noted.

Subpart A—General

§ 1207.1-1 Purpose of the program.

The Senior Companion Program (SCP) is authorized under Title II, Part C,of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113). The dual purpose of the program is to create part-time stipended volunteer community service opportunities for low-income persons aged 60 and over, and to provide supportive person-to-person services to assist adults having exceptional needs, developmental disabilities or other special needs for companionship.

§ 1207.1-2 Definitions.

Terms used in this part are defined as follows:

"Act" is the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, 87 Stat. 394, 42 U.S.C. 4951).

"Adult" is any person aged 21 or over.

"Advisory Council" is a group of persons formally organized by the project sponsor for the purpose of advising and supporting the sponsor in operating the project effectively.

"Agency" is the federal ACTION agency.

"Direct Benefits" are stipends, meals, transportation, annual physical examinations, volunteer insurance, recognition and uniforms included in the budget as *Volunteer Expenses.*

"Director" is the Director of ACTION.

"Exceptional Needs" are one or more physical, emotional, or mental health limitation(s).

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

"Handbook" is the SCP Handbook No. 4405.91, which contains policies for implementing these regulations.

"Handicapped" is a person or persons having physical or mental impairments that substantially limit one or more major life activities.

"Hard-to-reach" individuals are those who are physically or socially isolated because of factors such as language, disability, or inadequate transportation.

"Household" refers to related or unrelated persons living under the same roof and sharing common living expenses.

"Letter of Agreement" is a written agreement between a volunteer station, the project sponsor and the adult served or the person legally responsible for the adult. It authorizes the assignment of a Senior Companion in the client's home, defines Senior Companion activities and delineates the specific arrangements for supervision.

"Memorandum of Understanding" is a written statement prepared and signed by the Senior Companion sponsor and the volunteer station which identifies project requirements, working relationships and mutal responsibilities.

"OAVP" refers to the Older American Volunteer Programs, which include: the Senior Companion Program, the Foster Grandparent Program, and the Retired Senior Volunteer Program.

"Project" is the locally planned and implemented Senior Companion Program activity as agreed upon between ACTION and the sponsor.

"Service Area" is a geographically defined area in which Senior Companions are recruited, enrolled, and placed on assignments.

"Service Schedule" is the 20 hours per week that a Senior Companion serves.

"Sponsor" is a public agency or private nonprofit organization which is responsible for the operation of the Senior Companion project.

"Stipend" is a payment to Senior Companions to enable them to serve without cost to themselves.

"United States and States" means the several states, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa and the Trust Territory of the Pacific Islands.

"Volunteer Station" is a public agency, private nonprofit organization or proprietary health care agency or organization that accepts the responsibility for assignment and supervision of Senior Companions. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

§ 1207.1-3 Coordination.

The sponsor shall coordinate activities with project-related groups and individuals, including those representing government, industry, labor, volunteer organizations, programs for the aging, including State and Area Agencies on Aging, and other ACTION programs, to facilitate cooperation with existing or planned community services and to develop community support.

Subpart B—Project Development and Funding

§ 1207.2-1 Inquiries.

Inquiries regarding the Senior Companion Program application process, program criteria, or the availability of funds, should be directed to the ACTION State Office serving the inquirer's own state. ACTION headquarters office in Washington, D.C. will assist in directing inquiries to the appropriate State office.

§ 1207.2-2 Local support.

An ACTION grant may be awarded to fund up to 90% of the cost of development and operation of a Senior Companion project. The sponsor is required to contribute at least 10% of the total project cost. Stipend payments in excess of the amount established by ACTION may not be included as part of the local support commitment. In exceptional circumstances the Director may approve assistance for more than 90% of the total project costs if:

(a) The project is located in an area where local resources are too limited to provide 10%; or

(b) A test project is determined to be of exceptional value, sufficient to warrant Federal support in excess of 90% of the total project cost.

§ 1207.2-3 Sponsor eligibility and solicitation of proposals.

(a) *Sponsor eligibility.* ACTION will award grants only to public agencies and private non-profit organizations in the United States which have the authority to accept and the capability to administer such grants.

(b) *Solicitation of proposals.* Any eligible organization may file an application for a grant. Applicants may also be solicited by ACTION pursuant to its objective of achieving equitable program resource distribution. Solicited applications are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

[48 FR 26803, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1207.2-4 Project proposals.

(a) Applicants shall use standard forms prescribed by ACTION. ACTION State Offices will provide applicants with guidance and any additional instruction necessary to plan and budget proposed program activities.

(b) Agencies and organizations submitting grant applications must comply with provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities," as set forth in 45 Code of Federal Regulations (CFR) Part 1233.

(c) A potential sponsor must submit one copy of an application for a new SCP project to the State Agency on Aging, which has 45 days to review the application and make recommendations. The State Agency on Aging shall state in writing to ACTION its recommendations and reasons within this time period or will be considered to have waived its rights under this part.

§ 1207.2-5 Reveiw of project proposals.

(a) The ACTION State Office for the applicant's state will review the grant application to ensure that program requirements are complied with and that required documentation has been attached.

(b) If not approved, the application will be returned to the applicant with explanation of ACTION's decision. The unsuccessful applicant may reapply when the inadequacy, if any, found in the application is resolved.

§ 1207.2-6 Awards.

(a) ACTION will, within funds available, award a grant in writing to those applicants whose grant proposals provide the best potential for serving the purpose of the program. The award will be documented by Notice of Grant Award (NGA).

(b) The parties to the NGA are ACTION and the sponsoring organization. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of ACTION's obligation to provide financial support to the sponsor.

(c) A sponsor may receive a grant award for more than one OAVP project.

§ 1207.2-7 Grant management.

(a) Sponsors shall manage grants awarded to them in accordance with these regulations, ACTION Handbook 2650.2, entitled *Grants Management Handbook for Grantees,* and SCP Handbook No. 4405.91. A copy of each document will be furnished the sponsor at the time the initial grant is awarded.

(b) Project support provided under an ACTION grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

§ 1207.2-8 Suspension, termination and denial of refunding.

Grant suspension, termination and denial of refunding procedures are set forth in 45 CFR Part 1206, Chapter XII, and in ACTION Handbook 2650.2.

Subpart C—Project Operations

§ 1207.3-1 Sponsor responsibility.

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. The sponsor has the responsibility to:

(a) Employ, supervise and support a Project Director who will be directly responsible to the sponsor for the management of the project, including selection, training and supervision of project staff;

(b) Provide for the recruitment, assignment, supervision and support of Senior Companions. Special efforts are to be made to recruit and assign persons from minority groups, handicapped and hard-to-reach individuals, and groups in the community which are underrepresented in the project. The sponsor will stress the recruitment and enrollment of persons not already volunteering;

(c) Provide financial and in-kind support to fulfill the project's local share commitment;

(d) Establish, orient, and support an independent SCP Advisory Council;

(e) Provide the Senior Companions with not less than the minimum accident, personal liability, and excess auto liability insurance required by ACTION;

(f) Provide for appropriate recognition of the Senior Companions and their activities;

(g) Establish personnel practices, including provision of position descriptions for project staff, and service policies for Senior Companions, including grievance and appeal procedures for both volunteers and project staff;

(h) Ensure compliance with ACTION requirements relating to nondiscrimination, religious activity, political activity, lobbying, patronage toward persons related by blood or marriage, labor or anti-labor organization or related activities, nondisplacement of employed workers, nonimpairment of contracts, and noncompensation for services;

(i) Maintain project records in accordance with generally accepted accounting practice and provide for the accurate and timely preparation and submission of reports required by ACTION;

(j) Develop Senior Companion service opportunities through volunteer stations;

(k) Obtain ACTION concurrence in the selection of volunteer stations prior to the placement of Senior Companions;

(l) Negotiate, prior to placement of Senior Companions; a written Memorandum of Understanding with each volunteer station, identifying sponsor responsibilities, volunteer station responsibilities, and joint responsibilities;

(m) Orient volunteer station staff to the program and its activities;

(n) Provide not less than 40 hours of pre-service orientation to the Senior Companions;

(o) Arrange group in-service training for Senior Companions for a minimum of four hours each month;

(p) Provide or arrange for direct benefits (insurance, meals, physical examinations, recognition, stipends, transportation, and uniforms, if needed) for the Senior Companions in a timely manner;

(q) Ensure provision for volunteer safety;

(r) Comply with program regulations, policies and procedures prescribed by ACTION;

(s) Ensure that appropriate liability insurance is maintained for owned, nonowned, or hired vehicles used in the project;

(t) Develop a realistic transportation plan for the project based on lowest cost transportation modes; and

(u) Conduct an annual appraisal of volunteers' performance and an annual review of volunteers' income eligibility.

§ 1207.3-2 Project staff.

(a) Project staff are employees of the sponsor and are subject to its personnel policies and practices.

(b) ACTION must concur in writing with the sponsor's selection of a project director before such person is employed or earns pay from grant funds.

(c) The SCP project director shall serve full time and may not be employed or serve concurrently in another capacity, paid or unpaid, during established working hours without prior approval from ACTION. This does not preclude participation of the project director in activities of related local agencies, boards or organizations for the purposes of coordination and facilitating achievement of project goals and objectives.

(d) Compensation levels for project staff, including wages, salaries and fringe benefits, should be comparable to like or similar positions in the sponsor organization and in the community.

§ 1207.3-3 Advisory Council.

An Advisory Council shall be established to advise and assist the project sponsor and staff. There shall be a separate Advisory Council for each Older American Volunteer project administered by the sponsor. When a small number of volunteers is enrolled or other special conditions prevail, this requirement may be waived by the Director of OAVP. The Advisory Council shall:

(a) Advise the project director in the formulation of local policy, planning, and the development of operational procedures and practices consistent with program policies;

(b) Assist the sponsor by promoting community support for the project, advise on personnel actions affecting volunteers and project staff, and assist in developing local financial and in-kind resources;

(c) Include in its membership, when available: community, business and labor leaders, representatives from volunteer stations, public and private agencies, and persons specializing in the fields of aging and voluntarism. In addition, at least one-fourth of the Advisory Council shall be low-income persons aged 60 or over. This group must include Senior Companions as voting members. The sponsor's chief executive or designee, one member of its governing board, and the project director should be members of the Advisory Council but may not be officers of the Advisory Council. The sponsor's chief executive and the project director may not be voting members. The member representing the sponsor's governing board may be a voting member. The provisions of section 1207.5-1, Nondiscrimination, apply to the Advisory Council;

(d) Meet on a regular schedule and establish its own procedures, including election of officers and terms of office;

(e) Conduct an annual appraisal of project operation and submit a report to the sponsor, which shall be attached to the continuation grant application;

(f) Have an opportunity to advise the sponsor in advance on the selection or termination of the project director; and

(g) Ensure procedures are in effect to hear an appeal to actions affecting a Senior Companion adversely.

§ 1207.3-4 Volunteer station responsibility.

(a) Normally the volunteer station is an organization other than the sponsoring organization. The sponsor may function as a Senior Companion station only if the sponsor is: (1) A state organization administering a statewide Senior Companion project where the volunteer station is part of the state organization; (2) a federally-recognized Indian tribal government; or (3) in a sparsely populated area. In such sparsely populated areas, up to 10% of the enrolled volunteers may be placed directly by the sponsor.

(b) Volunteer station responsibilities include:

(1) Assisting with or arranging for volunteer transportation on or between assignments;

(2) Assisting in the provision of appropriate volunteer recognition;

(3) Developing and monitoring volunteer assignments, selecting adults to be served, supervising the volunteers, assisting the sponsor in matching volunteers to assignments and in providing pre-service orientation and in-service training for the Senior Companions;

(4) Providing for volunteer safety;

(5) Keeping records and preparing reports required by the sponsor; and

(6) Signing, prior to the placement of Senior Companions, a Memorandum of Understanding with the sponsor establishing working relationships and mutual responsibilities, and detailing the responsibilities outlined above as well as other agreed upon responsibilities, including the particulars of the volunteers' supervision.

(i) When Senior Companions are to serve in private homes, the Memorandum of Understanding shall also require that the volunteer station obtain a Letter of Agreement from the person to be served, or the person legally responsible for that person, authorizing or requesting volunteer service in the home and indicating what specific activities are to be performed.

(ii) The Memorandum of Understanding is to be reviewed and, as appropriate, changed annually. The Memorandum may be amended at any time by mutual agreement and must be signed and dated annually to indicate that review and update, if needed, have been accomplished.

§ 1207.3-5 Senior Companions.

(a) *Eligibility.* (1) Senior Companions shall be 60 years of age or older, no longer in the regular work force, determined by a physical examination to be capable of serving adults with exceptional or special needs without detriment to either themselves or the adult served, and willing to accept supervision as required.

(2) Eligibility to be a Senior Companion may not be restricted on the basis of education, experience, citizenship, race, color, creed, belief, sex, national origin, handicap, or political affiliation.

(3) To be enrolled, a Senior Companion cannot have an annual income, from all sources, exceeding the ACTION income eligibility guideline for the state in which he or she resides. The ACTION income eligibility guideline for each state is the higher amount of either: (i) 125% of the poverty line as set forth in Section 625 of the Economic Opportunity Act of 1964, as amended by Pub. L. 92-424 (42 U.S.C. 2971d), or (ii) 100% of the poverty line plus the amount the state supplements Federal Supplemental Security Income (SSI). In cases where a Senior Companion is a member of a household in which other persons share common expenses, his or her

income eligibility is determined by the combined income of members of the household.

(4) Once enrolled, a Senior Companion shall remain eligible to serve and to receive a stipend as long as his or her income does not exceed the prescribed ACTION income eligibility guideline by 20%. Income eligibility shall be reviewed annually by the sponsor.

(5) Recruitment and selection of a Senior Companion may not be based on any requirement of employment experience or formal education.

(b) *Terms of service.* (1) Senior Companions serve a total of twenty hours a week, usually five days a week. Travel time between the volunteer's home and place of assignment may not be considered part of the service schedule and is not stipended. Travel time between individual assignments is a part of the service schedule. Meal time may be part of the service schedule only if meals are taken with the individual served, and the taking of meals together is deemed by the sponsor and the volunteer station to be beneficial to the person served.

(2) Senior Companions are volunteers, not employees, of the sponsor.

(c) *Direct benefits.* The total of direct benefits for Senior Companions, including stipends, insurance, transportation, meals, physical examinations, recognition, and uniforms if appropriate, shall be a sum equal to at least 90% of the amount of the ACTION Federal share of the grant. In exceptional circumstances, the Director may waive this requirement. Federal and non-federal resources can be used to make up this sum. Direct benefits may not be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment insurance, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Direct benefits include:

(1) *Insurance.* Senior companions shall be provided with the ACTION specified minimum levels of accident insurance, personal liability insurance and, when appropriate, excess automobile liability insurance.

(i) *Accident insurance.* Accident insurance shall cover Senior Companions for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project-sponsored activities, such as recognition activities, orientation and Advisory Council meetings.

Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources including:

(A) Health insurance coverage;

(B) Other hospital or medical service plans;

(C) Any coverage under labor-management trusteed plans, union welfare plans, employer organization plans, or employee benefit organization plans; and

(D) Coverage under any governmental programs or coverage provided by any statute.

When benefits are provided in the form of services rather than by cash payments, the reasonable cash value of each service rendered shall be considered in determining the applicability of this provision. The benefits payable under a plan shall include the benefits that would have been payable had a claim been duly made therefor. The benefits payable shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits provided for by any other plan shall not exceed the total expenses incurred by the volunteer.

(ii) *Personal liability insurance.* Protection shall be provided against claims in excess of protection provided by other insurance.

(iii) *Excess automobile liability insurance.* Protection shall be provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles, or

(B) The limits of the applicable state financial responsibility law, or

(C) In the absence of a state financial responsibility law, levels of protection to be determined by ACTION for each person, each accident, and for property damage.

Senior Companions who drive their personal vehicles to or on assignments or project related activities must maintain personal automobile liability insurance equal to or exceeding the levels established by paragraph (c)(1)(iii) (B) or (C) of this section.

(2) *Meals.* Within the limits of available resources and project policy, Senior Companions will be provided or will receive assistance with the cost of meals taken during their service schedule.

(3) *Physical examinations.* Senior Companions are required to have a physical examination prior to assignment and annually thereafter.

(4) *Appropriate recognition* will be provided for Senior Companions.

(5) *Stipends.* A Senior Companion will receive a stipend in an amount determined by ACTION and payable in regular installments. The minimum amount of the stipend is set by law and may be adjusted by the Director from time to time. When more than one eligible member of a household serves as a Senior Companion or Foster Grandparent, only one member shall be entitled to receive a stipend. All income eligible members in such cases shall be entitled to other direct benefits. Only in cases where enrolled Senior Companions or Foster Grandparents marry, may each continue to receive a stipend.

(6) *Transportation.* Senior Companions shall be provided transportation or receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, advisory council meetings and recognition events. Reimbursement will be within the limits of available resources and project policy. Project funds may not be utilized to reimburse Senior Companions for transportation provided for or on behalf of clients.

§ 1207.3-6 Senior companion assignments.

(a) Assignments and activities must involve person-to-person relationships with the individuals served and may not include service to the volunteer station.

(b) Individuals served by Senior Companions must be adults, primarily older adults, who have one or more physical, emotional, or mental health limitations and are in need of assistance to achieve and maintain their highest level of independent living.

§ 1207.3-7 Non-stipended volunteers.

(a) *Purpose:* Projects are encouraged to enroll persons aged 60 and over, who are not low-income, as non-stipended volunteers in order to:

(1) Open opportunities for and tap the unused resources of older Americans, and

(2) Expand needed services to unserved and underserved populations.

(b) *Conditions of Service:* (1) Over-income persons, age 60 or over, may not be enrolled in SCP projects as non-stipended volunteers in communities where a Retired Senior Volunteer Program (RSVP) project is available and the RSVP project is willing and able to assume the management role of placing the volunteer at an SCP volunteer station. When a Senior Companion project is contacted by an individual expressing an interest in serving as a non-stipended volunteer, the project shall contact the ACTION State Office for its determination as to whether:

(i) Enrollment in the project is appropriate,

(ii) The volunteer should be referred to an RSVP project that has agreed, in writing, to serve in the prescribed management role.

(2) Non-stipended volunteers serve under the following conditions:

(i) Their service must not supplant, replace, or displace any stipended volunteers.

(ii) No special privilege or status is granted or created among volunteers, stipended or non-stipended, and equal treatment is required.

(iii) Training, supervision, and other support services and direct benefits, other than the stipend, are available equally to all volunteers.

(iv) All regulations and requirements applicable to the program, with the exception listed in paragraph (b)(2)(vi) of this section, apply to all volunteers.

(v) Non-stipended volunteers may be placed in separate volunteer stations where warranted.

(vi) Non-stipended volunteers serving in SCP volunteer stations will be encouraged but not required to serve 20 hours per week and 50 weeks per year. Volunteers will maintain a close one-to-one relationship with clients, and will serve a minimum of two clients on a regular basis.

(vii) Non-stipended volunteers may contribute the cost of direct benefits.

(3) There are no requirements on either SCP or RSVP projects to enroll non-stipended volunteers. Implementation of these regulations by a local project may not be a factor in awarding new or renewal grants.

(c) *Funding:* No appropriated funds for SCP may be used to pay any cost, including any administrative cost, incurred in implementing these regulations. Such costs may be paid with:

(1) Funds received by the Director as unrestricted gifts.

(2) Funds received by the Director as gifts to pay such costs.

(3) Funds contributed by non-stipended volunteers.

(4) Locally-generated contributions in excess of the amount required by law.

[52 FR 32133, Aug. 26, 1987]

Subpart D—Non-ACTION Funded Projects

§ 1207.4-1 Memorandum of agreement.

(a) If an eligible agency or organization wishes to sponsor a project without ACTION funding, and wishes to receive technical assistance and materials from ACTION, it must sign a Memorandum of Agreement with ACTION identifying mutual responsibilities and certifying its intent to comply with ACTION regulations.

(b) A non-ACTION funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of ACTION's technical assistance to the project.

(c) Termination of the agreement by either the project sponsor or ACTION will result in loss of the tax exempt status of volunteer direct benefits allowable to Senior Companions and loss of coverage by the statutory provision that receipt of the stipend will not affect the volunteers' eligibility for any governmental assistance.

(d) Entry into a Memorandum of Agreement with a sponsoring agency which does not receive ACTION funds will not, under any circumstances, create a financial obligation on the part of ACTION for costs associated with the project including increases in required payments to volunteers which may result from changes in the Act or in ACTION regulations.

Subpart E—Sanctions and Legal Representation

§ 1207.5-1 Special limitations.

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such project (i) any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election or, (ii) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (iii) any voter registration activity.

(3) No Senior Companion or employee of a sponsor or volunteer station may take any action, when serving in such capacity, with respect to a partisan or nonpartisan political activity that would result in the identification or apparent identification of the Senior Companion Program with such activity.

(4) No grant funds may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a Senior Companion, a sponsor chief executive, his or her designee, or project staff to draft, review or testify regarding measures or to make representation to such legislative body, committee or member, or (ii) In connection with an authorization or appropriations measure directly affecting the operation of the Senior Companion Program.

Prohibitions on Electoral and Lobbying Activities are fully set forth in 45 CFR Part 1226 and in ACTION Handbook 2650.2.

(b) *Restrictions on State or local government employees.* If the sponsor is a State or local government agency which received a grant from ACTION, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable. They are related to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

(1) Use his/her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or

(2) Directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency, or person for a political purpose; or

(3) Be a candidate for elective office, except in a nonpartisan election. "Nonpartisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

(c) *Religious activities.* Senior Companions and project staff funded by ACTION shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of their duties.

(d) *Nondiscrimination.* For purposes of this subpart, and for purposes of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 d *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. 6101 *et seq.*), any program, project, or activity to which volunteers are assigned under this Act shall be deemed to be receiving federal financial assistance.

(1) No person with responsibility in the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

(2) Sponsors are required to take affirmative action to overcome the effects of prior discrimination. Even in the absence of prior discrimination, a sponsor may take affirmative action to overcome conditions which resulted in limiting participation.

(3) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with a Senior Companion project.

(e) *Labor and anti-labor activity.* No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

(f) *Nondisplacement of employed workers.* A Senior Companion may not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of employed workers.

(g) *Nonimpairment of contracts.* A Senior Companion may not perform any service, or duty, or engage in any activity which impairs an existing contract for service. The term "contract for service" includes but is not limited to contracts, understandings, and arrangements, either written or oral, to provide professional, managerial, technical, or administrative services.

(h) *Noncompensation for services.* No person, organization, or agency shall request or receive any compensation for services of Senior Companions.

(i) *Nepotism.* Persons selected for projects staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is concurrence by the Advisory Council, with notification to ACTION.

(j) *Volunteer separation.* A sponsor may separate a volunteer for cause, including, but not limited to, extensive or unauthorized absences, misconduct, inability to perform assignments or having income in excess of the eligibility level established by ACTION.

§ 1207.5-2 Legal representation.

Counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of a Senior Companion may be paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of the performance of the Senior Companion activities. 45 CFR Part 1220 establishes the circumstances under which ACTION may pay such expenses.

PART 1208—FOSTER GRANDPARENT PROGRAM

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AUTHORITY: Secs. 211(a), 212, 221, 222, 223, 402(14) and 420 of Pub. L. 93-113, 87 Stat. 402, 403, 404, 407 and 414, 42 U.S.C. 5011 (a) and (f), 5012, 5021, 5022, 5023, 5042(14), and 5060.

SOURCE: 48 FR 26809, June 10, 1983, unless otherwise noted.

Subpart A—General

§ 1208.1-1 Purpose of the program.

The Foster Grandparent Program (FGP) is authorized under Title II, Part B, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113). The dual purpose of the program is to provide opportunities for low-income persons aged 60 or over to give supportive person-to-person service in health, education, welfare or related settings to help alleviate the physical, mental, or emotional problems of children having exceptional or special needs.

§ 1208.1-2 Definitions.

Terms used in this part are defined as follows:

"Act" is the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, 87 Stat. 394, 42 U.S.C. 4951).

"Advisory Council" is a group of persons formally organized by the project sponsor for the purpose of advising and supporting the sponsor in operating the project effectively.

"Agency" is the federal ACTION agency.

"Child" is any individual under 21 years of age.

"Children having exceptional needs" are those who are developmentally disabled such as those who are mentally retarded, autistic, have cerebral palsy or epilepsy or are visually handicapped, speech impaired, hearing impaired, orthopedically impaired, multihandicapped, emotionally disturbed or have a language disorder, specific learning disability or other significant health impairment. Existence of a child's exceptional need shall be verified by an appropriate professional, such as a physician, psychiatrist, psychologist, registered nurse or licensed practical nurse, speech therapist or educator before a Foster Grandparent is assigned to the child.

"Children with special needs" includes those who are: abused or neglected; in need of foster care; status offenders; juvenile delinquents; runaway youths; certain teen-age parents; and children in need of protective intervention in their homes. Existence of a child's special need shall be verified by an appropriate professional before a Foster Grandparent is assigned to the child.

"Direct Benefits" are stipends, meals, transportation, annual physical examinations, volunteer insurance, recognition and uniforms included in the budget as *Volunteer Expenses.*

"Director" is the Director of ACTION.

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

"Handbook" is the FGP Handbook No. 4405.90 which contains policies for implementing these regulations.

"Handicapped" is a person or persons having physical or mental impairments that substantially limit one or more major life activities.

"Hard-to-reach" individuals are those who are physically or socially isolated because of factors such as language, disability, or inadequate transportation.

"Household" refers to related or unrelated persons living under the same roof and sharing common living expenses.

"Individual Care or Treatment Plan" is a written description of a Foster Grandparent's assignment with a child. The plan defines the goals for the child to be attained through the relationship with a Foster Grandparent and the specific activities to be performed by the Foster Grandparent in the assignment.

"In-home" refers to non-institutional assignment of a Foster Grandparent in a private residence, a foster home, or a group home.

"Letter of Agreement" is a written agreement between a volunteer station, the project sponsor, and the person or persons legally responsible for the child served. It authorizes the assignment of a Foster Grandparent in the child's home, defines the Foster Grandparent's activities and delineates specific arrangements for supervision.

"Memorandum of Understanding" is a written statement prepared and signed by the Foster Grandparent project sponsor and the volunteer station which identifies project requirements, working relationships and mutual responsibilities.

"OAVP" refers to the Older American Volunteer Programs, which include: the Foster Grandparent Program, the Retired Senior Volunteer Program, and the Senior Companion Program.

"Parent" is a natural parent or a person acting in place of a natural parent, such as a child's natural grandparent, or a step-parent with whom the child lives. The term also includes otherwise unrelated individuals who are legally responsible for a child's welfare.

"Project" is the locally planned and implemented Foster Grandparent Program activity as agreed upon between ACTION and the sponsor.

"Service Area" is a geographically defined area in which Foster Grandparents are recruited, enrolled, and placed on assignments.

"Service Schedule" is the 20 hours per week that a Foster Grandparent serves.

"Sponsor" is a public agency or private nonprofit organization which is responsible for the operation of the Foster Grandparent project.

"Stipend" is a payment to Foster Grandparents to enable them to serve without cost to themselves.

"United States and States" mean the several states, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa and the Trust Territory of the Pacific Islands.

"Volunteer Station" means a public agency, private nonprofit organization or proprietary health care agency or organization that accepts the responsibility for assignment and supervision of Foster Grandparents in health, education, welfare or related settings such as private homes, hospitals, homes for dependent and neglected children, or similiar establishments.

Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government.

Private homes are not volunteer stations.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1208.1-3 Coordination.

The sponsor shall coordinate activities with project-related groups and individuals, including those representing government, industry, labor, volunteer organizations, programs for children, programs for the aging, including State and Area Agencies on Aging, and other ACTION programs, to facilitate cooperation with existing or planned community services and to develop community support.

Subpart B—Project Development and Funding

§ 1208.2-1 Inquiries.

Inquiries regarding the Foster Grandparent Program application process, program criteria, or the availability of funds, should be directed to the ACTION State Office serving the inquirer's own state. ACTION headquarters office in Washington, D.C. will assist in directing inquiries to the appropriate state office.

§ 1208.2-2 Local support.

An ACTION grant may be awarded to fund up to 90% of the cost of development and operation of a Foster Grandparent project. The sponsor is required to contribute at least 10% of the total project cost. Stipend payments in excess of the amount established by ACTION may not be included as part of the local support commitment. In exceptional circumstances the Director may approve assistance for more than 90% of the total project cost if:

(a) The project is located in an area where local resources are too limited to provide 10%; or

(b) A test project is determined to be of exceptional value, sufficient to warrant Federal support in excess of 90% of the total project cost.

§ 1208.2-3 Sponsor eligibility and solicitation of proposals.

(a) *Sponsor eligibility.* ACTION will award grants only to public agencies and private non-profit organizations in the United States which have the authority to accept and the capability to administer such grants.

(b) *Solicitation of Proposals.* (1) Any eligible organization may file an application for a grant. Applicants may also be solicited by ACTION pursuant to its objective of achieving equitable program resource distribution. Solicited applications are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

(2) Grants for projects to be carried out over an area in a state more comprehensive than one community shall be awarded to the State Agency on Aging unless:

(i) The state has not established or designated such an agency, or

(ii) Such agency has been afforded at least 45 days to review and make recommendations on a prospective sponsor's application.

(3) Grants for projects to be carried out entirely in a community served by a Community Action Agency shall be awarded to that agency unless that agency and the State Agency on Aging have been afforded at least 45 days to review and make recommendations on a new grant application.

(4) In the event that the State Agency on Aging or the Community Action Agency is not awarded the applicable grant, any application that is approved will contain or be supported by satisfactory assurances that the project has been developed and will, to the extent feasible, be conducted in consultation with, or with the participation of, such agencies.

§ 1208.2-4 Project proposals.

(a) Applicants shall use standard forms prescribed by ACTION. ACTION State Offices will provide applicants with guidance and any additional instruction necessary to plan and budget proposed program activities.

(b) Agencies and organizations submitting grant applications must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities," as set forth in 45 CFR Part 1233.

(c) A potential sponsor must submit one copy of an application for a new FGP project to the State Agency on Aging, which has 45 days to review the application and make recommendations. The State Agency on Aging shall state in writing to ACTION its recommendations and reasons within this time period or will be considered to have waived its rights under this part.

§ 1208.2-5 Review of project proposals.

(a) The ACTION State Office for the applicant's state will review the grant application to ensure that program requirements are complied with and that required documentation has been attached.

(b) If not approved, the application will be returned to the applicant with explanation of ACTION's decision. The unsuccessful applicant may reapply when the inadequacy, if any, found in the application is resolved.

§ 1208.2-6 Awards.

(a) ACTION will, within funds available, award a grant in writing to those applicants whose grant proposals provide the best potential for serving the purpose of the program. The award will be documented by *Notice of Grant Award* [NGA].

(b) The parties to the NGA are ACTION and the sponsoring organization. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of ACTION's obligation to provide financial support to the sponsor.

(c) A sponsor may receive a grant award for more than one OAVP project.

§ 1208.2-7 Grant management.

(a) Sponsors shall manage grants awarded to them in accordance with these regulations. ACTION Handbook 2650.2 entitled, *Grants Management Handbook for Grantees*, and the FGP Handbook No. 4405.90. A copy of each document will be furnished to the sponsor at the time the initial grant is awarded.

(b) Project support provided under an ACTION grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

§ 1208.2-8 Suspension, termination and denial of refunding.

Grant suspension, termination and denial of refunding procedures are set forth in 45 CFR Part 1206, Chapter XII, and in ACTION Handbook 2650.2.

Subpart C—Project Operations

§ 1208.3-1 Sponsor responsibility.

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. The sponsor has the responsibility to:

(a) Employ, supervise and support a Project Director, who will be directly responsible to the sponsor for the management of the project, including selection, training and supervision of project staff;

(b) Provide for the recruitment, assignment, supervision and support of Foster Grandparents. Special efforts are to be made to recruit and assign persons from minority groups, handicapped and hard-to-reach individuals, and groups in the community which are underrepresented in the project. The sponsor will stress the recruitment and enrollment of persons not already volunteering;

(c) Provide financial and in-kind support to fulfill the project's local share commitment;

(d) Establish, orient and support an independent FGP Advisory Council;

(e) Provide Foster Grandparents with not less than the minimum accident, personal liability, and excess auto liability insurance required by ACTION:

(f) Provide for appropriate recognition of the Foster Grandparents and their activities;

(g) Establish personnel practices, including provision of position descriptions for project staff, and service policies for Foster Grandparents, including grievance and appeal procedures for both volunteers and project staff;

(h) Ensure compliance with ACTION requirements relating to nondiscrimination, religious activity, political activity, lobbying, patronage toward persons related by blood or marriage, labor or anti-labor organization or related activities, nondisplacement of employed workers, nonimpairment of contracts, and noncompensation for services;

(i) Maintain project records in accordance with generally accepted accounting practice and provide for the accurate and timely preparation and submission of reports required by ACTION;

(j) Develop Foster Grandparent service opportunities through volunteer stations;

(k) Obtain ACTION concurrence in the selection of volunteer stations prior to the placement of Foster Grandparents.

(l) Negotiate, prior to placement of Foster Grandparents, a written Memorandum of Understanding with each volunteer station, identifying sponsor responsibilities, volunteer station responsibilities and joint responsibilities;

(m) Orient volunteer station staff to the Program and its activities;

(n) Provide not less than 40 hours of pre-service orientation to Foster Grandparents;

(o) Arrange group in-service training for Foster Grandparents for a minimum of four hours each month;

(p) Provide or arrange for direct benefits (insurance, meals, physical examinations, recognition, stipends, transportation and uniforms, if needed) for the Foster Grandparents in a timely manner;

(q) Ensure provision for volunteer safety;

(r) Comply with program regulations, policies and procedures prescribed by ACTION;

(s) Ensure that appropriate liabili
insurance is maintained for owne
nonowned, or hired vehicles used
the project;

(t) Develop a realistic transportatio
plan for the project based on th
lowest cost transportation modes; ar

(u) Conduct an annual appraisal
volunteers' performance and a
annual review of volunteers' incom
eligibility.

§ 1208.3-2 Project staff.

(a) Project staff are employees
the sponsor and are subject to its pe
sonnel policies and practices.

(b) ACTION must concur in writin
with the sponsor's selection of
project director before such person
employed or earns pay from gra
funds.

(c) The FGP Project Director sha
serve full time and may not be en
ployed or serve concurrently in a
other capacity, paid or unpaid, durin
established working hours, withou
prior approval from ACTION. Th
does not preclude participation of th
project director in activities of relat
local agencies, boards or organizatio
for the purposes of coordination a
facilitating achievement of proje
goals and objectives.

(d) Compensation levels for proje
staff, including wages, salaries ar
fringe benefits, should be comparab
to like or similar positions in the spo
sor organization and in the commur
ty.

[48 FR 26809, June 10, 1983; 48 FR 447
Sept. 30, 1983]

§ 1208.3-3 Advisory Council.

An Advisory Council shall be esta
lished to advise and assist the proje
sponsor and staff. There shall be
separate Advisory Council for eac
Older American Volunteer project a
ministered by the sponsor. When
small number of volunteers is enroll
or other special conditions prevail, th
requirement may be waived by the D
rector of OAVP. The Advisory Coun
shall;

(a) Advise the project director in th
formulation of local policy, plannin
and the development of operation

procedures and practices consistent with program policies;

(b) Assist the sponsor by promoting community support for the project, advise on personnel actions affecting volunteers and project staff, and assist in developing local financial and in-kind resources;

(c) Include in its membership, when available: community, business and labor leaders, representatives from volunteer stations, public and private agencies, and persons specializing in the fields of aging, child development and voluntarism. In addition, at least one-fourth of the Advisory Council shall be low-income persons aged 60 or over. This group must include Foster Grandparents as voting members. The sponsor's chief executive or designee, one member of its governing board, and the project director should be members of the Advisory Council but may not be officers of the Advisory Council. The sponsor's chief executive and the project director may not be voting members. The member representing the sponsor's governing board may be a voting member. The provisions of § 1208.5-1(d), Nondiscrimination, apply to the Advisory Council;

(d) Meet on a regular schedule and establish its own procedures, including election of officers and terms of office;

(e) Conduct an annual appraisal of project operation and submit a report to the sponsor, which shall be attached to the continuation grant application;

(f) Have an opportunity to advise the sponsor in advance on the selection or termination of the project director; and

(g) Ensure procedures are in effect to hear an appeal to actions affecting a Foster Grandparent adversely.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1208.3-4 Volunteer station responsibility.

(a) Normally the volunteer station is an organization other than the sponsoring organization. The sponsor may function as a Foster Grandparent volunteer station only if the sponsor is:

(1) A state organization administering a statewide Foster Grandparent project where the volunteer station is part of the state organization, (2) a Federally recognized Indian tribal government, or (3) in a sparsely populated area. In such sparsely populated areas, up to 10% of the enrolled volunteers may be placed directly by the sponsor.

(b) Volunteer Station responsibilites include:

(1) Assisting with or arranging for volunteer transportation on or between assignments;

(2) Assisting in the provision of appropriate volunteer recognition;

(3) Developing and monitoring volunteer assignments, selecting children to be served, supervising the volunteers, assisting the sponsor in matching volunteers to assignments and in providing pre-service orientation and in-service training for the Foster Grandparents;

(4) Providing for volunteer safety;

(5) Keeping records and preparing reports required by the sponsor; and

(6) Signing, prior to the placement of Foster Grandparents, a Memorandum of Understanding with the sponsor establishing working relationships and mutual responsibilities, and detailing the responsibilities outlined above, as well as other agreed upon responsibilities, including the particulars of the volunteers' supervision.

(i) When Foster Grandparents are to serve in private homes, the Memorandum of Understanding shall also require that the volunteer station obtain a Letter of Agreement from the child's parent(s) authorizing or requesting volunteer service in the home and indicating what specific activities are to be performed. This agreement will constitute an individual care plan and will be followed for the child served by a Foster Grandparent in an in-home placement.

(ii) The Memorandum of Understanding is to be reviewed and, as appropriate, changed annually. It may be amended at any time by mutual agreement and must be signed and dated annually to indicate that review and update, if needed, have been accomplished.

§ 1208.3-5 Foster grandparents.

(a) *Eligibility.* (1) Foster Grandparents shall be 60 years of age or older, no longer in the regular work force, determined by a physical examination to be capable of serving children with exceptional or special needs without detriment to either themselves or the children served, and willing to accept supervision as required.

(2) Eligibility to be a Foster Grandparent may not be restricted on the basis of education, experience, citizenship, race, color, creed, belief, sex, national origin, handicap, or political affiliation.

(3) To be enrolled, a Foster Grandparent cannot have an annual income from all sources, exceeding the ACTION income eligibility guideline for the state in which he or she resides. The ACTION income eligibility guideline for each state is the higher amount of either:

(i) 125% of the poverty line as set forth in Section 625 of the Economic Opportunity Act of 1964, as amended by Public Law 92-424 (42 U.S.C. 2971d), or

(ii) 100% of the poverty line plus the amount the state supplements Federal Supplemental Security Income (SSI).

In cases where a Foster Grandparent is a member of a household in which other persons share common expenses, his or her income eligibility is determined by the combined income of members of the household.

(4) Once enrolled, a Foster Grandparent shall remain eligible to serve and to receive a stipend as long as his or her income does not exceed the prescribed ACTION income eligibility guideline by 20%. Income eligibility shall be reviewed annually by the sponsor.

(5) Recruitment and selection of a Foster Grandparent may not be based on any requirement of employment experience or formal education.

(b) *Terms of service.* (1) Foster Grandparents serve a total of twenty hours a week, usually five days a week. Travel time between the volunteer's home and place of assignment may not be considered part of the service schedule and is not stipended. Travel time between individual assignments is a part of the service schedule. Meal time may be part of the service schedule only if meals are taken with the individual served, and the taking of meals together is deemed by the sponsor and the volunteer station to be beneficial to the person served.

(2) Foster Grandparents are volunteers, not employees, of the sponsor.

(c) *Direct benefits.* The total of direct benefits for Foster Grandparents, including stipends, insurance, transportation, meals, physical examinations, recognition, and uniforms if appropriate, shall be a sum equal to at least 90 percent of the amount of the ACTION federal share of the grant award. In exceptional circumstances, the Director may waive this requirement. Federal and non-federal resources can be used to make up this sum. Direct benefits may not be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment insurance, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Direct Benefits include:

(1) *Insurance.* Foster Grandparents shall be provided with the ACTION-specified minimum levels of accident insurance, personal liability insurance and, when appropriate, excess automobile liability insurance.

(i) *Accident insurance.* Accident insurance shall cover Foster Grandparents for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project-sponsored activities, such as recognition activities, orientation and Advisory Council meetings. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources, including:

(A) Health insurance coverage;

(B) Other hospital or medical service plans;

(C) Any coverage under labor-management trusteed plans, union welfare plans, employer organization plans, or employee benefit organization plans; and

(D) Coverage under any governmental programs, or coverage provided by any statute.

When benefits are provided in the form of services rather than by cash payments, the reasonable cash value of each service rendered shall be considered in determining the applicability of this provision. The benefits payable under a plan shall include the benefits that would have been payable had a claim been duly made therefor. The benefits payable shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits provided for by any other plan shall not exceed the total expenses incurred by the volunteer.

(ii) *Personal Liability Insurance.* Protection shall be provided against claims in excess of protection provided by other insurance.

(iii) *Excess Automobile Liability Insurance.* Protection shall be provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles, or

(B) The limits of applicable state financial responsibility law, or

(C) In the absence of a state financial responsibility law, levels of protection to be determined by ACTION for each person, each accident, and for property damage.

Foster Grandparents who drive their personal vehicles to or on assignments or project-related activities must maintain personal automobile liability insurance equal to or exceeding the levels established by paragraph (c)(1)(iii) (B) or (C) of this section.

(2) *Meals.* Within the limits of available resources and project policy, Foster Grandparents will be provided or will receive assistance with the cost of meals taken during their service schedule.

(3) *Physical Examinations.* Foster Grandparents are required to have a physical examination prior to assignment and annually thereafter.

(4) *Appropriate Recognition* will be provided for Foster Grandparents.

(5) *Stipends.* A Foster Grandparent will receive a stipend in an amount determined by ACTION and payable in regular installments. The minimum amount of the stipend is set by law and may be adjusted by the Director from time to time. When more than one eligible member of a household serves as a Foster Grandparent or Senior Companion, only one member shall be entitled to receive a stipend. All income-eligible members in such cases shall be entitled to other direct benefits. Only in cases where enrolled Foster Grandparent or Senior Companions marry, may each continue to receive a stipend.

(6) *Transportation.* Foster Grandparents shall be provided transportation or receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, advisory council meetings and recognition events. Reimbursement will be within the limits of available resources and project policy. Project funds may not be utilized to reimburse Foster Grandparents for transportation provided for or on behalf of children.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1208.3–6 Foster grandparent assignments.

(a) Foster Grandparents shall serve children with special or exceptional needs.

(b) Priority consideration shall be given to placing Foster Grandparents in assignments where: those assignments constitute early intervention; there is a possibility for significant improvement in the quality of life for the children served, and there is a probability of a long-term relationship between the Foster Grandparent and the child.

(c) Priority consideration shall also be given to preventing or minimizing institutionalization by placing Foster Grandparents with children in-home, in special education classes, in special training centers, in developmental centers, in day care centers for children with exceptional or special needs, in hospitals, and in the juvenile justice system.

(d) The individualized care plan for a Foster Grandparent to follow in each in-home assignment he or she receives, should include the projected role and functions of the Foster Grandparent, be updated on a regular basis, and be used as a guide for evaluating the child's development and the Foster Grandparent's role.

(e) Where state, county or local sponsor's definition(s) of children having exceptional needs and children with special needs vary from the definitions in § 1208.1-2 of these regulations, ACTION will determine the suitability of non-ACTION definition(s) in regard to placement of Foster Grandparents with children.

(f) Foster Grandparent activities develop person-to-person, supportive relationships with children and do not provide service to volunteer stations or any other agency or organization where volunteers serve. Activities of Foster Grandparents should serve the dual purpose of being personally meaningful to the volunteers themselves and providing support and companionship to the children served.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1208.3-7 Children served.

(a) Identification of individual children to receive supportive person-to-person services from a Foster Grandparent is a responsibility of volunteer station professional staff and will be made in accordance with criteria specified in § 1208.3-6. Actual Foster Grandparent assignments to individual children and a determination of the length of time each child should receive such services will be made with concurrence of the sponsor or his or her designee, usually the project director, in accordance with the Memorandum of Understanding described in § 1208.3-1(l).

(b) Foster Grandparent concurrence with assignments to individual children is required.

(c) Preference will be given to assigning Foster Grandparents to young children. Each Foster Grandparent shall preferably, but not exclusively, be assigned to two children.

(d) When a Foster Grandparent is assigned to a mentally retarded child, that assignment may continue beyond the child's 21st birthday, provided:

(1) That such child was receiving such services prior to attaining the chronological age of 21;

(2) That the public or private nonprofit agency (volunteer station) responsible for providing services to the child determines that it is in the best interest of both the Foster Grandparent and the child; and

(3) There is mutual agreement by all parties with respect to provision of services to the child involved.

[48 FR 26809, June 10, 1983; 48 FR 44797, 44798, Sept. 30, 1983]

§ 1208.3-8 Non-stipended volunteers.

(a) *Purpose:* Projects are encouraged to enroll persons aged 60 and over, who are not low-income, as non-stipended volunteers in order to:

(1) Open opportunities for and tap the unused resources of older Americans, and

(2) Expand needed services to unserved and underserved populations.

(b) *Conditions of Service:* (1) Over-income persons, age 60 or over, may not be enrolled in FGP projects as non-stipended volunteers in communities where a Retired Senior Volunteer Program (RSVP) project is available and the RSVP project is willing and able to assume the management role of placing the volunteer at an FGP volunteer station. When a Foster Grandparent project is contacted by an individual expressing an interest in serving as a non-stipended volunteer, the project shall contact the ACTION State Office for its determintion as to whether:

(i) Enrollment in the project is appropriate,

(ii) The volunteer should be referred to an RSVP project that has agreed, in writing, to serve in the prescribed management role.

(2) Non-stipended volunteers serve under the following conditions:

(i) Their service must not supplant, replace, or displace any stipended volunteers.

(ii) No special privilege or status is granted or created among volunteers, stipended or non-stipended, and equal treatment is required.

(iii) Training, supervision, and other support services and direct benefits, other than the stipend, are available equally to all volunteers.

(iv) All regulations and requirements applicable to the program, with the exception listed in paragraph (b)(2)(vi) of this section, apply to all volunteers.

(v) Non-stipended volunteers may be placed in separate volunteer stations where warranted.

(vi) Non-stipended volunteers serving in FGP volunteer stations will be encouraged but not required to serve 20 hours per week and 50 weeks per year. Volunteers will maintain a close one-to-one relationship with clients, and will serve a minimum of two clients on a regular basis.

(vii) Non-stipended volunteers may contribute the cost of direct benefits.

(3) There are no requirements on either FGP or RSVP projects to enroll non-stipended volunteers. Implementation of these regulations by a local project may not be a factor in awarding new or renewal grants.

(c) *Funding:* No appropriated funds for FGP may be used to pay any cost, including any administrative cost, incurred in implementing these regulations. Such costs may be paid with:

(1) Funds received by the Director as unrestricted gifts.

(2) Funds received by the Director as gifts to pay such costs.

(3) Funds contributed by non-stipended volunteers.

(4) Locally-generated contributions in excess of the amount required by law.

[52 FR 32134, Aug. 26, 1987]

Subpart D—Non-ACTION Funded Projects

§ 1208.4-1 Memorandum of agreement.

(a) If an eligible agency or organization wishes to sponsor a project without ACTION funding, and wishes to receive technical assistance and materials from ACTION, it must sign a Memorandum of Agreement with ACTION identifying mutual responsibilities and certifying its intent to comply with ACTION regulations.

(b) A non-ACTION funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of ACTION's technical assistance to the project.

(c) Termination of the agreement by either the project sponsor or ACTION will result in loss of the tax exempt status of volunteer direct benefits allowable to Foster Grandparents and loss of coverage by the statutory provision that receipt of the stipend will not affect the volunteers' eligibility for any governmental assistance.

(d) Entry into a Memorandum of Agreement with a sponsoring agency which does not receive ACTION funds will not, under any circumstances, create a financial obligation on the part of ACTION for costs associated with the project including increases in required payments to volunteers which may result from changes in the Act or in ACTION regulations.

Subpart E—Sanctions and Legal Representation

§ 1208.5-1 Special limitations.

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with (i) any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election, or (ii) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (iii) any voter registration activity.

(3) No Foster Grandparent or employee of a sponsor or volunteer station may take any action, when serving in such capacity, with respect to a partisan or nonpartisan political activity that would result in the identification or apparent identification of the Foster Grandparent Program with such activity.

(4) No grant funds may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a Foster Grandparent, a sponsor chief executive, his or her designee, or project staff to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the Foster Grandparent Program. Prohibitions on Electoral and Lobbying-Activities are fully set forth in 45 CFR Part 1226.

(b) *Restrictions on State or local Government Employees.* If the sponsor is a State or local government agency which receives a grant from ACTION, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable. They are related to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

(1) Use his/her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization agency, or person for political purposes; or

(3) Be a candidate for elective office, except in a nonpartisan election.

Nonpartisan election means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

(c) *Religious activities.* Foster Grandparents and project staff funded by ACTION shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of their duties.

(d) *Nondiscrimination.* For purposes of this subpart, and for purposes of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 d *et seq.*). Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. 6101 *et seq.*), any program, project, or activity to which volunteers are assigned under this Act shall be deemed to be receiving Federal financial assistance.

(1) No person with responsibility in the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

(2) Sponsors are required to take affirmative action to overcome the effects of prior discrimination. Even in the absence of prior discrimination, a sponsor may take affirmative action to overcome conditions which resulted in limiting participation.

(3) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with a Foster Grandparent project.

(e) *Labor and Anti-Labor Activity.* No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

(f) *Nondisplacement of Employed Workers.* A Foster Grandparent may not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of employed workers.

(g) *Nonimpairment of Contracts.* A Foster Grandparent may not perform any service or duty or engage in any activity which impairs an existing contract for service. The term "contract for service" includes but is not limited to contracts, understandings, and arrangements, either written or oral, to provide professional, managerial, technical, or administrative service.

(h) *Noncompensation for Services.* No person, organization, or agency shall request or receive any compensation for services of Foster Grandparents.

(i) *Nepotism.* Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is concurrence by the Advisory Council, with notification to ACTION.

(j) *Volunteer Separation.* A sponsor may separate a volunteer for cause, including, but not limited to, extensive or unauthorized absences, misconduct, inability to perform assignments or having income in excess of the eligibility level established by ACTION.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1208.5-2 Legal representation.

Counsel may be employed and counsel fees, court costs, bail and other expenses incidental to the defense of a Foster Grandparent may be paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the Foster Grandparent's activities. 45 CFR Part 1220 establishes the circumstances under which ACTION may pay such expenses.

PART 1209—RETIRED SENIOR VOLUNTEER PROGRAM

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AUTHORITY: Secs. 201, 212, 221, 222, 223, 402(14), 418 and 420 of Pub. L. 93-113, 83 Stat. 108, 87 Stat. 403, 404 and 414, 42 U.S.C. 5001, 5012, 5021, 5022, 5023, 5042(14), 5058 and 5060.

SOURCE: 48 FR 26815, June 10, 1983, unless otherwise noted.

Subpart A—General

§ 1209.1-1 Purpose of the program.

The Retired Senior Volunteer program (RSVP) is authorized under Title II, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113). The purpose of the program is to provide a variety of opportunities for retired persons aged 60 or over to participate more fully in the life of their community through significant volunteer service.

§ 1209.1-2 Definitions.

Terms used in this part are defined as follows:

"Act" is the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, 87 Stat. 394, 42 U.S.C. 4951).

"Advisory Council" is a group of persons formally organized by the project sponsor for the purpose of advising and supporting the sponsor in operating the project effectively.

"Agency" is the federal ACTION Agency.

"Director" is the Director of ACTION.

"Handbook" is the RSVP Operations Handbook No. 4405.92 which contains policies for implementing this regulation.

"Handicapped" is a person or persons having physical or mental impairments that substantially limit one or more major life activities.

"Hard-to-reach" individuals are those who are physically or socially isolated because of factors such as language, disability, or inadequate transportation.

"Letter of Agreement" is a written agreement between a volunteer station, the project sponsor, and the person served or the person legally responsible for the person served. The agreement authorizes assignment of an RSVP volunteer in the home of the person served, defines volunteer activities and specific arrangements for supervision.

"Memorandum of Understanding" is a statement prepared and signed by the administrator of a volunteer station and the RSVP director which identifies mutual responsibilities and working relationships.

"OAVP" refers to the Older American Volunteer Programs, which include: the Retired Senior Volunteer Program, the Foster Grandparent Program, and the Senior Companion Program.

"Project" is the locally planned and implemented Retired Senior Volunteer Program activity as agreed upon between ACTION and the sponsor.

"Service Area" is a geographically defined area in which volunteers are recruited, enrolled, and placed on assignments.

"Sponsor" is a public agency or private nonprofit organization which is responsible for the operation of the local RSVP project.

"United States and States" means the several states, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

"Volunteer Station" is a public or private non-profit organization, or a proprietary health care agency or organization that accepts responsibility for assignment and supervison of volunteers. Each volunteer station must be licensed or otherwise certified, when required, by appropriate state or local government. Private homes are not volunteer stations.

[48 FR 26815, June 10, 1983; 48 FR 44797, 44798, Sept. 30, 1983]

§ 1209.1-3 Coordination.

The sponsor shall coordinate activities with project-related groups and individuals, including those representing government, industry, labor, volunteer organizations, programs for the aging, including State and Area Agencies on Aging, and other ACTION programs, to facilitate cooperation with existing or planned community services and to develop community support.

Subpart B—Project Development and Funding

§ 1209.2-1 Inquiries.

Inquiries regarding the Retired Senior Volunteer Program application process, program criteria, or the availability of funds, should be directed to the ACTION State Office serving the inquirer's own state. ACTION headquarters office in Washington, D.C., will assist in directing inquiries to the appropriate state office.

§ 1209.2-2 Budget support.

(a) An RSVP sponsor is responsible for generating needed financial support for the RSVP project from all sources, federal and non-federal, including grants, cash and in-kind contributions, to meet budgeted costs of the project. The sponsor will supplement an ACTION grant with other support to the fullest extent possible and at least equal in amount to that negotiated between ACTION and the sponsor. The following percentages will be used as a guide by ACTION in negotiating the level of local support a sponsor will be required to contribute to the total project budget. In no event shall the required proportion of local support (including in-kind contributions) be more than 10% in the first year, 20% in the second year, 30% in the third year, 40% in the fourth year, and 50% in the fifth and succeeding years. The level of local support negotiated may be higher or lower than these percentages, as mutually agreed to by ACTION and the sponsor, and as justified by local conditions. Sponsors proposing to contribute local support of less than 30% of the total project budget for the third or succeeding years must provide ACTION with an acceptable written justification for the lower level of support.

(b) The total of Volunteer Expenses for Senior Volunteers, including insurance, transportation, meals, and recognition activities, shall be an amount equal to at least 25% of the amount of the ACTION grant award. Federal and non-Federal resources may be used to make up this sum.

Exceptions to this requirement may be requested of the Director, Older American Volunteer Programs, through the ACTION State Director by an RSVP Sponsor who can clearly demonstrate that (1) this requirement will result in undue hardship in the conduct of project operation, and (2) a lesser amount will meet the volunteer expense needs of the number of volunteers budgeted.

§ 1209.2-3 Sponsor eligibility and solicitation of proposals.

(a) *Sponsor eligibility.* ACTION will award grants only to public agencies and private non-profit organizations in the United States which have the authority to accept and the capability to administer such grants.

(b) *Solicitation of proposals.* (1) Any eligible organization may file an application for a grant. Applicants may also be solicited by ACTION pursuant to its objective of achieving equitable program resource distribution. Solicited applications are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

(2) The Director may not award any grant or contract for a project in any state to any agency or organization unless, if such state has a state agency established or designated pursuant to Section 305(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3025(a)(1)), such agency itself is the recipient of the award, or such agency has been afforded at least 45 days in which to review and make recommendations on new grant applications.

§ 1209.2-4 Project proposals.

(a) Applicants shall use standard forms prescribed by ACTION. ACTION State Offices will provide applicants with guidance and any additional instructions necessary to plan and budget proposed program activities.

(b) Agencies and organizations submitting grant applications must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities," as set forth in 45 CFR Part 1232.

(c) A potential sponsor must submit one copy of an application for a new RSVP project to the State Agency on Aging, which has 45 days to review the application and make recommendations. The State Agency on Aging shall state in writing to ACTION its recommendations and reasons within this time period or will be considered to have waived its rights under this part.

§ 1209.2-5 Review of project proposals.

(a) The ACTION State Office for the applicant's state will review the grant application to ensure that program requirements are complied with and that required documentation has been attached.

(b) If not approved, the application will be returned to the applicant with an explanation of ACTION's decision. The unsuccessful applicant may reapply when the inadequacy, if any, found in the application is resolved.

§ 1209.2-6 Awards.

(a) ACTION will, within funds available, award a grant in writing to those applicants whose grant proposals provide the best potential for serving the purpose of the program. The award will be documented by *Notice of Grant Award* (NGA).

(b) The parties to the NGA are ACTION and the sponsoring organization. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of ACTION's obligation to provide financial support to the sponsor.

(c) A sponsor may receive a grant award for more than one OAVP project.

§ 1209.2-7 Grant management.

(a) Sponsors shall manage grants awarded to them in accordance with provisions of these regulations; ACTION Handbook No. 2650.2, *Grants Management Handbook for Grantees,* and ACTION Handbook No. 4405.92, *RSVP Operations Handbook.* A copy of each document will be furnished to the sponsor at the time the initial grant is awarded.

(b) Project support provided under an ACTION grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

§ 1209.2-8 Suspension, termination and denial of refunding.

Grant suspension, termination and denial of refunding procedures are set forth in 45 CFR Part 1206, Chapter XII, and in ACTION Handbook 2650.2.

Subpart C—Project Operations

§ 1209.3-1 Sponsor responsibility.

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. The sponsor has the responsibility to:

(a) Employ, supervise, and support a project director, who will be directly responsible to the sponsor for the management of the project, including selection, training and supervision of project staff;

(b) Provide for the recruitment, assignment, supervision and support of volunteers. Special efforts are to be made toward recruitment and assignment of older persons from minority groups, handicapped and hard-to-reach individuals, and groups in the community which are under-represented in the project. The sponsor will stress the recruitment and enrollment of persons not already volunteering:

(c) Provide financial and in-kind support to fulfill the project's local support commitment;

(d) Establish, orient and support an independent RSVP Advisory Council;

(e) Provide the volunteers with not less than the minimum accident, personal liability, and excess auto liability insurance required by ACTION;

(f) Provide for appropriate recognition of the volunteers and their activities;

(g) Establish personnel practices, including provision of position descriptions for project staff and grievance and appeal procedures for both volunteers and project staff;

(h) Ensure compliance with ACTION requirements relating to nondiscrimination, religious activity, political activity, lobbying, patronage toward persons related by blood or marriage, labor and anti-labor organization or related activities, nondisplacement of employed workers, nonimpairment of contracts, and noncompensation for services;

(i) Maintain project records in accordance with generally accepted accounting practices and provide for accurate and timely preparation and submission of reports required by ACTION;

(j) Develop volunteer service opportunities through volunteer stations;

(k) Negotiate, prior to placement of volunteers, a written Memorandum of Understanding with each volunteer station, identifying sponsor responsibilities, volunteer station responsibilities, and joint responsibilities;

(l) Orient volunteer station staff to RSVP and its activities;

(m) Provide pre-service orientation to the volunteers on RSVP goals and activities;

(n) Arrange for in-service training of the volunteers by volunteer stations or other sources of training as needed;

(o) Provide or arrange for volunteer benefits in a timely manner;

(p) Ensure provision for volunteer safety;

(q) Comply with program regulations, policies and procedures prescribed by ACTION;

(r) Ensure that appropriate liability insurance is maintained for owned, non-owned, or hired vehicles used in the project; and

(s) Develop a realistic transportation plan for the project based on the lowest cost transportation modes.

[48 FR 26815, June 10, 1983; 48 FR 44798, Sept. 30, 1983]

§ 1209.3-2 Project staff.

(a) Project staff are employees of the sponsor and subject to its personnel policies and practices.

(b) ACTION must concur in writing with the sponsor's selection of a roject director before such person is mployed or earns pay from grant ınds.

(c) A project director shall serve full-me and may not be employed or erve concurrently in another capacy, paid or unpaid, during established orking hours, without prior approval om ACTION. This does not preclude articipation of the project director in ctivities of related local agencies, oards or organizations for the puroses of coordination and facilitating chievement of project goals and obectives.

(d) Compensation levels of the roject staff, including wages, salaries nd fringe benefits, should be compaıble to like or similar positions in the ponsor organization and in the comıunity.

1209.3-3 RSVP Advisory Council.

An Advisory Council shall be estabshed to advise and assist the project ponsor and staff. There shall be a eparate Advisory Council for each lder American Volunteer Program dministered by the sponsor. When a nall number of volunteers is enrolled r other special conditions prevail, this equirement may be waived by the Diector of OAVP. The Advisory Council hall:

(a) Advise the project director in the ormulation of local policy, planning, nd the development of operational rocedures and practices consistent ith program policies;

(b) Assist the sponsor by promoting ommunity support for the project, dvise on personnel actions affecting olunteers and project staff, and assist n developing local financial and inind resources;

(c) Include in its membership, when vailable; community business and ıbor leaders, representatives from olunteer stations, public and private gencies, and persons specializing in ne fields of aging or voluntarism. In ddition at least one-fourth of the Adisory Council shall be persons aged 60 r over. This group must include SVP volunteers as voting members. he sponsor's chief executive or desigee, one member of its governing oard, and the project director should e members of the Advisory Council but may not be officers of the Advisory Council. The sponsor's chief executive and the project director may not be voting members. The member representing the sponsor's governing board may be a voting member. The provisions of § 1209.5-1(c), Nondiscrimination, apply to the Advisory Council;

(d) Meet on a regular schedule and establish its own procedures, including election of officers and terms of office;

(e) Conduct an annual appraisal of project operation and submit a report to the sponsor, which shall be attached to the continuation grant application;

(f) Have an opportunity to advise the sponsor in advance on the selection or termination of the project director; and

(g) Ensure procedures are in effect to hear an appeal to actions affecting a volunteer adversely.

§ 1209.3-4 Volunteer station responsibility.

(a) Normally the volunteer station is an organization other than the sponsoring organization. The sponsor may function as a volunteer station, provided that not more than 5% of the total number of volunteers budgeted for the project are assigned to it. This limitation does not apply to the assignment of volunteers to other programs administered by the sponsor. Also, the RSVP project itself may function as a volunteer station or may initiate special volunteer activities which temporarily function at that location, provided ACTION agrees that these activities are in accord with program objectives and will not hinder overall project operation.

(b) Volunteer stations at which volunteers serve will be in the community where such persons live or in nearby communities. Volunteer services will be performed either on publicly owned and operated facilities or projects, or on local projects sponsored by private nonprofit organizations (other than political parties), other than projects involving construction, operation, or so much of any facility used or to be used for sectarian instruction or as a place of religious worship.

(c) Volunteer station responsibilities include: (1) Assisting with or arranging for volunteer transportation and meals, and assisting in the provision of appropriate volunteer recognition:

(2) Developing and monitoring volunteer assignments, assigning, supervising and training volunteers and providing them with preservice orientation and in-service training;

(3) Providing for volunteer safety;

(4) Keeping records and preparing reports required by sponsor;

(5) Signing, prior to placement of volunteers, a Memorandum of Understanding with the sponsor establishing working relationships and mutual responsibilities, and detailing responsibilities outlined above as well as other agreed-upon responsibilities. The Memorandum of Understanding is to be reviewed and, as appropriate, changed annually. The Memorandum may be amended at any time by mutual agreement and must be signed and dated annually to indicate that review and update, if needed, have been accomplished.

§ 1209.3-5 RSVP volunteers.

(a) *Eligibility.* (1) To be eligible for enrollment as an RSVP volunteer, a person must be 60 years of age or over, retired, willing to serve on a regular basis, and willing to accept instruction and supervision as required.

(2) Eligibility to be an RSVP volunteer may not be restricted on the basis of education, income, experience, citizenship, race, color, creed, belief, sex, national origin, political affiliation, or handicap.

(b) *Volunteer expenses.* (1) Within the limits of a project's approved budget and in accordance with provisions of the RSVP Operations Handbook, volunteers will be provided transportation or will receive assistance with costs of transportation, recognition activities, and, when possible, meals. Project funds may not be used to reimburse volunteers for volunteer expenses, including transportation costs, incurred while performing their volunteer assignments. Provision shall be made by the sponsor to obtain ACTION specified minimum levels of accident insurance, personal liability insurance and, when appropriate, excess automobile liability insurance.

(i) *Accident insurance:* Accident insurance shall cover RSVP volunteers for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project-sponsored activities, such as recognition activities, orientation and Advisory Council meetings. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources, including:

(A) Health insurance coverage;

(B) Other hospital or medical service plans;

(C) Any coverage under labor-management trusteed plans, union welfare plans, employer organization plans, or employee benefit organization plans; and

(D) Coverage under any governmental programs, or provided by any statute. When benefits are approved in the form of services rather than by cash payments, the reasonable cash value of each service rendered shall be considered in determining the applicability of this provision. The benefits payable under a plan shall include the benefits that would have been payable had a claim been duly made therefor. The benefits payable shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits provided for by any other plan shall not exceed the total expenses incurred by the volunteer.

(ii) *Personal Liability Insurance:* Protection shall be provided against claims in excess of protection provided by other insurance.

(iii) *Excess Automobile Liability Insurance:* Protection shall be provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles, or

(B) The limits of applicable state financial responsibility law, or

(C) In the absence of a state financial responsibility law, levels of protection to be determined by ACTION for each person, each accident, and for property damage.

Volunteers who drive their personal vehicles to or on assignments or project-related activities, must maintain personal automobile liability insurance equal to or exceeding the levels established by paragraphs (b)(1)(iii) (B) and (C) of this section.

§ 1209.3-6 Volunteer assignments.

(a) A variety of assignnments shall be developed prior to the recruitment of RSVP volunteers. Assignments shall include opportunities to respond to significant community needs.

(b) Assignments shall be matched to the interests, abilities, preferences and availability of volunteers. Special consideration shall be given to developing assignments that allow for the limited physical strength and mobility of the handicapped older volunteer.

§ 1209.3-7 Service area.

The service area of a project identified in the approved grant application may not be redefined without prior written approval from ACTION.

Subpart D—Non-ACTION Funded RSVP Projects

§ 1209.4-1 Memorandum of agreement.

(a) If an eligible agency or organization wishes to sponsor an RSVP project without ACTION funding, and wishes to receive technical assistance and materials from ACTION, it must sign a Memorandum of Agreement with ACTION identifying mutual responsibilities and certifying its intent to comply with ACTION regulations.

(b) A non-ACTION funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of ACTION's technical assistance to the project.

(c) Entry into a Memorandum of Agreement with a sponsoring agency which does not receive ACTION funds will not, under any circumstances, create a financial obligation on the part of ACTION for costs associated with the project.

Subpart E—Sanctions

§ 1209.5-1 Special limitations.

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such project with (i) any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election, or (ii) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (iii) any voter registration activity.

(3) No RSVP volunteer or employee of a sponsor or volunteer station may take any action, when serving in such capacity, with respect to a partisan or nonpartisan political activity that would result in the identification or apparent identification of the Retired Senior Volunteer Program with such activity.

(4) No grant funds may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests an RSVP volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review or testify regarding measures or to make representation to such legislative body, committee or member, or

(ii) In connection with an authorization or appropriation measure directly affecting the operation of the Retired Senior Volunteer Program.

(5) Prohibitions on Electoral and Lobbying Activities are fully set forth in 45 CFR Part 1226.

(b) *Restrictions on State or Local Government Employees.* If the sponsor is a State or local government agency which received a grant from ACTION, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or

(2) Directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) Be a candidate for elective office, except in a nonpartisan election. "Nonpartisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

(c) *Religious activities.* RSVP volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of their duties.

(d) *Nondiscrimination.* For purposes of this subpart, and for purposes of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (Pub. L. 94–135, Title III; 42 U.S.C. 6101 *et seq.*), any project or activity to which volunteers are assigned shall be deemed to be receiving federal financial assistance.

(1) No person with responsibility in the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

(2) Sponsors are required to take affirmative action to overcome the effects of prior discrimination. Even in the absence of prior discrimination, a sponsor may take affirmative action to overcome conditions which resulted in limiting participation.

(3) No person in the United States shall, on the ground of sex, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any project.

(e) *Labor or Anti-Labor Activity.* No grant funds shall be directly or indirectly utilized to finance labor or antilabor organization or related activity.

(f) *Nondisplacement of Employed Workers.* An RSVP volunteer may not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of employed workers.

(g) *Nonimpairment of Contracts.* An RSVP volunteer may not perform any service or duty, or engage in any activity which impairs an existing contract for service. The term "contract for service" includes but is not limited to contracts, understandings and arrangements, either written or oral, to provide professional, managerial, technical, or administrative service.

(h) *Noncompensation for Services.* No person, organization, or agency shall request or receive any compensation for services of RSVP voluneers.

(i) *Volunteer Status.* RSVP volunteer service shall not be deemed employment for any purpose.

(j) *Nepotism.* Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is concurrence by the Advisory Council, with notification to ACTION.

(k) *Volunteer Separation.* A volunteer may be separated from the program for cause, including, but not limited to, extensive absences, misconduct, or inability to perform assignments.

§ 1209.5–2 Legal representation.

Counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of a Senior Volunteer may be paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the RSVP volunteer's activities. 45 CFR Part 1220 establishes the circumstances under which ACTION may pay such expenses.

PART 1210—VISTA TRAINEE DESELECTION AND VOLUNTEER EARLY TERMINATION PROCEDURES

Subpart A—General

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1210.1-1 Purpose.
1210.1-2 Scope.
1210.1-3 Definitions.

Subpart B—VISTA Trainee Deselection

1210.2-1 Grounds for deselection.
1210.2-2 Procedure for deselection.

Subpart C—VISTA Volunteer Early Termination

1210.3-1 Grounds for termination.
1210.3-2 Removal from project.
1210.3-3 Suspension.
1210.3-4 Initiation of termination.
1210.3-5 Preparation for appeal.
1210.3-6 Appeal of termination.
1210.3-7 Inquiry by Hearing Examiner.
1210.3-8 Termination file and Examiner's report.
1210.3-9 Decision by Director of VISTA.
1210.3-10 Reinstatement of Volunteer.
1210.3-11 Disposition of termination and appeal files.

Subpart D—National Grant Trainees and Volunteers

1210.4 Early termination procedures for National Grant Trainees and Volunteers.
APPENDIX A—STANDARD FOR EXAMINERS

AUTHORITY: Secs. 103(c), 402(14), Pub. L. 93-113, 87 Stat. 397 and 407.

SOURCE: 46 FR 35512, July 9, 1981, unless otherwise noted.

Subpart A—General

§ 1210.1-1 Purpose.

This part establishes procedures under which certain Trainees and Volunteers serving in ACTION programs under Pub. L. 93-113 will be deselected from training or termininated from service and how they may appeal their deselection or termination.

§ 1210.1-2 Scope.

(a) This part applies to all Trainees and Volunteers enrolled under Part A of Title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, as amended, (42 U.S.C. 4951 *et seq.*,) (hereinafter the "Act") and full-time Volunteers serving under Part C of Title I of the Act.

(b) This part does not apply to the medical separation of any Trainee or Volunteer. Separate procedures, as detailed in the VISTA Handbook, are applicable for such separations.

§ 1210.1-3 Definitions.

(a) "Trainee" means a person enrolled in a program under Part A of Title I of the Act or for full-time volunteer service under Part C of Title I of the Act who has reported to training but has not yet completed training and been assigned to a project.

(b) "Volunteer" means a person enrolled and currently assigned to a project as a full-time Volunteer under Part A of Title I of the Act, or under Part C of Title I of the Act.

(c) "Sponsor" means a public or private nonprofit agency to which ACTION has assigned Volunteers.

(d) "Hearing Examiner" or "Examiner" means a person having the qualifications described in Appendix A who has been appointed to conduct an inquiry with respect to a termination.

(e) "National Grant Program" means a program operated under Part A, Title I of the Act in which ACTION has awarded a grant to provide the direct costs of supporting VISTA Volunteers on a national or multi-regional basis. VISTA Volunteers may be assigned to local offices or project affiliates. The national grantee provides overall training, technical assistance and management support for project operations.

(f) "Local component" means a local office or project affiliate of a national grantee to which VISTA Volunteers are assigned under the VISTA National Grants Program.

(g) "Termination" means the removal of a Volunteer from VISTA service by ACTION, and does not refer to removal of a Volunteer from a particular project which has been requested by a sponsor or Governor under § 1210.3-2.

(h) "Deselection" means the removal of a Trainee from VISTA service by ACTION.

Subpart B—VISTA Trainee Deselection

§ 1210.2-1 Grounds for deselection.

ACTION may deselect a Trainee out of a training program for any of the following reasons:

(a) Failure to meet training selection standards which includes, but is not limited to, the following conduct:

(1) Inability or refusal to perform training assignments;

(2) Disruptive conduct during training sessions;

(b) Conviction of any criminal offense under Federal, State or local statute or ordinance;

(c) Violation of any provision of the Domestic Volunteer Service Act of 1973, as amended, or any ACTION policy, regulation, or instruction;

(d) Intentional false statement, omission, fraud, or deception in obtaining selection as a Volunteer; or

(e) Refusal to accept Volunteer Placement.

§ 1210.2-2 Procedure for deselection.

(a) The Regional Director or designee shall notify the Trainee in writing that ACTION intends to deselect the Trainee. The notice must contain the reasons for the deselection and indicate that the Trainee has 5 days to appeal.

(b) The Trainee is placed on Administrative Hold at the time of the notice of deselection.

(c) The Trainee has 5 days after receipt of the notice to appeal in writing to the Regional Director, or designee specified in the notice, furnishing any supportive documentation. In the appeal letter, the Trainee may request an opportunity to present his or her case in person.

(d) If the Trainee does not respond to the notice, deselection becomes effective at the expiration of the Trainee's time to appeal.

(e) Within 5 days after receiving the Trainee's appeal, if no personal presentation is requested, the Regional Director or designee must issue a decision. If a personal presentation is requested, the Regional Director or designee must schedule it within 5 days, and must issue a decision 5 days after such presentation. In either case, the decision of the Regional Director or designee is final.

Subpart C—VISTA Volunteer Early Termination

§ 1210.3-1 Grounds for termination.

ACTION may terminate or suspend a Volunteer based on the Volunteer's conduct for the following reasons:

(a) Conviction of any criminal offense under Federal, State, or local statute or ordinance;

(b) Violation of any provision of the Domestic Volunteer Service Act of 1973, as amended, or any ACTION policy, regulation, or instruction;

(c) Failure refusal or inability to perform prescribed project duties as outlined in the Project Narrative and/or volunteer assignment description and as directed by the sponsoring organization to which the Volunteer is assigned;

(d) Involvement in activities which substantially interfere with the Volunteer's performance of project duties;

(e) Intentional false statement, omission, fraud, or deception in obtaining selection as a Volunteer;

(f) Any conduct on the part of the Volunteer which substantially diminishes his or her effectiveness as a VISTA Volunteer; or

(g) Unsatisfactory performance of Volunteer assignment.

§ 1210.3-2 Removal from project.

(a) Removal of a Volunteer from the project assignment may be requested and obtained by a written request supported by a statement of reason by:

(1) The Governor or chief executive officer of the State or similar jurisdiction in which the Volunteer is assigned or,

(2) The sponsoring organization. The sole responsibility for terminating or transferring a Volunteer rests with the ACTION Agency.

(b) A request for removal of a Volunteer must be submitted to the

ACTION State Director, who will in turn notify the Volunteer of the request. The State Director, after discussions with the Volunteer and in consultation with the Regional Director, if necessary, has 15 days to attempt to resolve the situation with the sponsor or the Governor's office. If the situation is not resolved at the end of the 15 day period, the Volunteer will be removed from the project and placed on Administrative Hold, pending a decision as set forth in paragraph (c) of this section.

(c) The State office will take one of the following actions concerning a Volunteer who has been removed from a project assignment:

(1) Accept the Volunteer's resignation;

(2) If removal was requested for reasons other than those listed in § 1210.3-1, ACTION will attempt to place the Volunteer on another project. If reassignment is not possible, the Volunteer will be terminated for lack of suitable assignment, and he or she will be given special consideration for reinstatement; or

(3) If removal from the project is approved based on any of the grounds for early termination as set forth in § 1210.3-1, the Volunteer may appeal the termination grounds as detailed in Subpart C of this part to establish whether such termination is supported by sufficient evidence. If ACTION determines that the removal based on grounds detailed in § 1210.3-1 is not established by adequate evidence, then the procedures outlined in § 1210.3-2(c)(2) will be followed.

(d) A Volunteer's removal during a term of service may also occur as a result of either the termination of, or refusal to renew, the Memorandum of Agreement between ACTION and the sponsoring organization, or the termination or completion of the initial Volunteer assignment. In such cases, the Volunteer will be placed in Administrative Hold status while the Regional Office attempts to reassign the Volunteer to another project. If no appropriate reassignment within the Region is found within the Administrative Hold period, the Volunteer will be terminated but will receive special consideration for reinstatement as soon as an appropriate assignment becomes available. If appropriate reassignment is offered the Volunteer and declined, ACTION has no obligation to offer additional or alternative assignments.

§ 1210.3-3 Suspension.

(a) The ACTION State Director may suspend a Volunteer for up to 30 days in order to determine whether sufficient evidence exists to start termination proceedings against the Volunteer. Suspension is not warranted if the State Director determines that sufficient grounds already exist for the initiation of termination. In that event, the termination procedures contained in § 1210.3-4 will be followed.

(b) Notice of suspension may be written or verbal and is effective upon delivery to the Volunteer. Within 3 days after initiation of the suspension, the Volunteer will receive a written notice of suspension setting forth in specific detail the reason for the suspension. During the suspension period the Volunteer may not engage in project activities, but will continue to receive all allowances, including stipend.

(c) At the end of the suspension period, the Volunteer must either be reassigned to a project, or termination proceedings must be initiated.

§ 1210.3-4 Initiation of termination.

(a) *Opportunity for Resignation.* In instances where ACTION has reason to believe that a Volunteer is subject to termination for any of the grounds cited in § 1210.3-1, an ACTION staff member will discuss the matter with the Volunteer. If, after the discussion, the staff member believes that grounds for termination exist, the Volunteer will be given an opportunity to resign. If the Volunteer chooses not to resign, the administrative procedures outlined below will be followed.

(b) *Notification of Proposed Termination.* The Volunteer will be notified, in writing by certified mail, of ACTION's intent to terminate him or her by the ACTION State Director at least 15 days in advance of the proposed termination date. The letter must give the reasons for termination, and notify the Volunteer that he or she has 10 days within which to answer in writing and to furnish any affidavits or written material. This answer must be submitted to the ACTION State Director or a designee identified in the notice of proposed termination.

(c) *Review and Notice of Decision.* (1) Within 5 working days after the date of receipt of the Volunteer's answer, the State Director or designee will send a written Notice of Decision to the Volunteer by certified mail. (If no answer is received from the Volunteer within the time specified, the State Director or designee will send such notice within 5 days after the expiration of the Volunteer's time to answer.)

(2) If the decision is to terminate the Volunteer, the Notice will set forth the reasons for the decision, the effective date of termination (which, if the Volunteer has filed an answer, may not be earlier than 10 days after the date of the Notice of Decision), and the fact that the Volunteer has 10 days in which to submit a written appeal to the Regional Director.

(3) A Volunteer who has not filed an answer pursuant to the procedures outlined above is not entitled to appeal the decision or request a hearing and may be terminated on the date of the Notice.

(d) *Allowances and Project Activities.* (1) A Volunteer who files an answer within the 10 days allowed by § 1210.3-4(b) with the State Director or designee following receipt of the notice of proposed termination, will be placed in Administrative Hold status, and may continue to receive regular allowances, but no stipend, in accordance with ACTION policy, until the appeal is finally decided. The Volunteer may not engage in any project related activities during this time.

(2) If the proposed termination is reversed, the Volunteer's stipend and any other allowances lost during the period of review will be reinstated retroactively.

§ 1210.3-5 Preparation for appeal.

(a) *Entitlement to Representation.* A Volunteer may be accompanied, represented and advised by a representative of the Volunteer's own choice at any stage of the appeal. A person chosen by the Volunteer must be willing to act as representative and not be disqualified because of conflict of position.

(b) *Time for Preparation and Presentation.* (1) A Volunteer's representative, if a Volunteer or an employee of ACTION, must be given a reasonable amount of time off from assignment to present the appeal.

(2) ACTION will not pay travel expenses or per diem travel allowances for either a Volunteer or the Volunteer's representative in connection with the preparation of the appeal, except to attend the hearing as provided in § 1210.3-7(c)(5).

(c) *Access to Agency Records.* (1) A Volunteer is entitled to review any material in his or her official Volunteer folder and any relevant Agency documents to the extent permitted by the Privacy Act and the Freedom of Information Act, (5 U.S.C. 552a; 5 U.S.C. 552). Examples of documents which may be withheld from Volunteers include references obtained under a pledge of confidentiality, official Volunteer folders of other Volunteers and privileged intra-Agency memoranda.

(2) A Volunteer may review relevant documents in the possession of a sponsor to the same extent ACTION would be entitled to review them.

§ 1210.3-6 Appeal of termination.

(a) *Appeal to Regional Director.* A Volunteer has 10 days from the Notice of Decision issued by the State Director or designee in which to appeal to the Regional Director. The appeal must be in writing and specify the reasons for the Volunteer's disagreement with the decision. The Regional Director has 10 days in which to render a written decision on the Volunteer's appeal, indicating the reason for the decision. In notifying the Volunteer of the decision, the Regional Director must also inform the Volunteer of his or her opportunity to request the appointment of a Hearing Examiner and the procedure to be followed.

(b) *Referral to Hearing Examiner.* If the Volunteer is dissatisfied with the decision of the Regional Director, the Volunteer has 5 days in which to request the appointment of a Hearing Examiner. The Regional Director must act on that request within 5 days. The Hearing Examiner must possess the qualifications specified in Appendix A to this Part, and may not be an employee of ACTION unless his or her principal duties are those of Hearing Examiner.

§ 1210.3-7 Inquiry by Hearing Examiner.

(a) *Scope of Inquiry.* (1) The Examiner shall conduct an inquiry of a nature and scope appropriate to the issues involved in the termination. If the Examiner determines that the termination involves relevant disputed issues of fact, the Examiner must hold a hearing unless it is waived by the Volunteer. If the Examiner determines that the termination does not involve relevant disputed issues of facts, the Examiner need not hold a hearing, but must provide the parties an opportunity for oral presentation of their respective positions. At the Examiner's discretion, the inquiry may include:

(i) The securing of documentary evidence;

(ii) Personal interviews, including telephone interviews;

(iii) Group meetings; or

(iv) Affidavits, written interrogatories or depositions.

(2) The Examiner's inquiry shall commence within 7 days after referral by the Regional Director. The Examiner shall issue a report as soon as possible, but within 30 days after referral, except when a hearing is held. If hearing is held, the Examiner shall issue a report within 45 days after the referral.

(b) *Conduct of Hearing.* If a hearing is held, the conduct of the hearing and production of witnesses shall conform with the following requirements:

(1) The hearing shall be held at a time and place determined by the Examiner who shall consider the convenience of parties and witnesses and expense to the Government in making the decision.

(2) Ordinarily, attendance at the hearing will be limited to persons determined by the Examiner to have a direct connection with it. If requested by the Volunteer, the Examiner must open the hearing to the public.

(3) The hearing shall be conducted so as to bring out pertinent facts, including the production of pertinent records.

(4) Rules of evidence shall not be applied strictly, but the Examiner may exclude irrelevant or unduly repetitious testimony or evidence.

(5) Decisions on the admissibility of evidence or testimony shall be made by the Examiner.

(6) Testimony shall be under oath or affirmation, administered by the Examiner.

(7) The Examiner shall give the parties an opportunity to present oral and written testimony that is relevant and material, and to cross-examine witnesses who appear to testify.

(8) The Examiner may exclude any person from the hearing for conduct that obstructs the hearing.

(c) *Witnesses.* (1) All parties are entitled to produce witnesses.

(2) Volunteers, employees of a sponsor, and employees of ACTION shall be made available as witnesses when requested by the Examiner. The Examiner may request witnesses on his or her own initiative. Parties shall furnish to the Examiner and to opposing parties a list of proposed witnesses, and an explanation of what the testimony of each is expected to show, at least 10 days before the date of the hearing. The Examiner may waive the time limit in appropriate circumstances.

(3) Employees of ACTION shall remain in a duty status during the time they are made available as witnesses.

(4) Volunteers, employees and any other persons who serve as witnesses shall be free from coercion, discrimination, or reprisal for presenting their testimony.

(5) The Examiner must authorize payment of travel expense and per diem at standard Government rates for the Volunteer and a representative to attend the hearing.

(6) The Examiner may authorize payment of travel expense and per diem at standard Government rates for other necessary witnesses to attend the hearing if he or she determines that the required testimony cannot be satisfactorily obtained by

affidavit, written interrogatories or deposition at less cost.

(d) *Report of Hearing.* (1) The Examiner shall determine how any hearing shall be reported and shall have either a verbatim transcript or written summary of the hearing prepared, which shall include all pertinent documents and exhibits submitted and accepted. If the hearing is reported verbatim, the Examiner shall make the transcript a part of the record of the proceedings.

(2) If the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made part of the record of proceedings. When agreed to in writing, the summary constitutes the report of the hearing. If the Examiner and the parties fail to agree on the hearing summary, the parties are entitled to submit written exceptions to any part of the summary, and these written exceptions and the summary will constitute the report of the hearing and shall be made part of the record of proceedings.

(3) The Volunteer may make a recording of the hearing at the Volunteer's own expense if no verbatim transcript is made.

§ 1210.3-8 Termination file and Examiner's report.

(a) *Preparation and Content.* The Examiner shall establish a termination file containing documents related to the termination, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. The Examiner shall also prepare a report of findings and recommendations which shall be made part of the termination file.

(b) *Review by Volunteer.* On completion of the termination file, the Examiner shall make it available to the Volunteer and representative for review and comment before submission to the Director of VISTA. Any comments by the Volunteer or representative should be submitted to the Hearing Examiner for inclusion in the termination file not later than 5 days after the file is made available to them. The comments should identify those parts of the Examiner's report which support the appeal.

(c) *Submission of termination file.* Immediately upon receiving the comments from the Volunteer the Hearing Examiner shall submit the termination file to the Director of VISTA.

§ 1210.3-9 Decision by Director of VISTA.

The Director of VISTA shall issue a written decision, including a statement of the basis for the decision, within 10 days after receipt of the termination file. The decision of the Director of VISTA is the final Agency decision.

§ 1210.3-10 Reinstatement of Volunteer.

(a) If the Regional Director or Director of VISTA reinstates the Volunteer, the Regional Director may at his or her discretion reassign the Volunteer to the Volunteer's previous project or to another project. The Regional Director, in making such a decision, must request the Volunteer's views, but has the final decision on the Volunteer's placement.

(b) If the Volunteer's termination is reversed, stipend and other allowances lost during the appeal period will be paid retroactively.

§ 1210.3-11 Disposition of termination and appeal files.

All termination and appeal files shall be forwarded to the Director of VISTA after a final decision has been made and are subject to the provisions of the Privacy Act and Freedom of Information Act. No part of any successful termination appeal may be made part of, or included in, a Volunteer's official folder.

Subpart D—National Grant Trainees and Volunteers

§ 1210.4 Early termination procedures for National Grant Trainees and Volunteers.

Trainees and Volunteers serving in the National Grant Program as defined in § 1210.1-3(e) will be subject to the same termination procedure as standard VISTA Trainees and Volunteers with the following exceptions:

(a) For Trainees, the deselection procedure, [See § 1210.2-2] will be handled by the Project Manager in ACTION/Headquarters.

(b) The Initiation of termination, [See § 1210.3-4 (a) and (b)] will be handled by the VISTA Project Manager in ACTION/Headquarters, with the concurrence of the appropriate State Director. The Review and Notice of Decision, [See § 1210.3-4(c)] will be handled by the VISTA Project Manager in ACTION/Headquarters.

(c) The Appeal of termination, [See § 1210.3-6(a)] will be handled by the Chief of VISTA Branch and not the Regional Director.

(d) The final decision on a Volunteer appeal will be made by the Director of VISTA as provided in § 1210.3.

APPENDIX A—STANDARD FOR EXAMINERS

(a) An Examiner must meet the requirements specified in either paragraph (1), (2), (3), or (4) of this appendix:

(1)(a) Current employment in Grades GS-12 or equivalent, or above;

(b) Satisfactory completion of a specialized course of training prescribed by the Office of Personnel Management for Examiners;

(c) At least four years of progressively responsible experience in administrative, managerial, professional, investigative, or technical work which has demonstrated the possession of:

(i) The personal attributes essential to the effective performance of the duties of an Examiner, including integrity, discretion, reliability, objectivity, impartiality, resourcefulness, and emotional stability.

(ii) A high degree of ability to:

—Identify and select appropriate sources of information; collect, organize, analyze and evaluate information; and arrive at sound conclusions on the basis of that information;

—Analyze situations; make an objective and logical determination of the pertinent facts; evaluate the facts; and develop practical recommendations or decisions on the basis of facts;

—Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;

—Interpret and apply regulations and other complex written material;

—Communicate effectively orally and in writing, including the ability to prepare clear and concise written reports; and

—Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.

(iii) A good working knowledge of:

—The relationship between Volunteer administration and overall management concerns; and

—The principles, systems, methods and administrative machinery for accomplishing the work of an organization.

(2) Designation as an arbitrator on a panel of arbitrators maintained by either the Federal Mediation and Conciliation Service or the American Arbitration Association.

(3) Current or former employment as, or current eligibility on the Office of Personnel Management's register for Hearing Examiner, GS-935-0.

(4) Membership in good standing in the National Academy of Arbitrators.

(b) A former Federal employee who, at the time of leaving the Federal service, was in Grade GS-12 or equivalent, or above, and who meets all the requirements specified for an Examiner except completion of the prescribed training course, may be used as an Examiner upon satisfactory completion of the training course.

PART 1211—VOLUNTEER GRIEVANCE PROCEDURES

Sec.

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APPENDIX A—STANDARDS FOR EXAMINERS

AUTHORITY: Secs. 104(d), 402(14), 420, Pub. L. 93-113, 87 Stat. 398, 407, and 414.

SOURCE: 45 FR 39271, June 10, 1980, unless otherwise noted.

§ 1211.1-1 Purpose.

This Part establishes procedures under which certain volunteers enrolled under Pub. L. 93-113 may present and obtain resolution of grievances.

§ 1211.1-2 Applicability.

This Part applies to all volunteers enrolled under Part A of Title I of the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93-113, (42 U.S.C. 4951 *et seq.*).

§ 1211.1-3 Definitions.

(a) "Volunteer" means a person enrolled and currently serving as a full-time volunteer under Part A of Title I of the Domestic Volunteer Service Act of 1973. For the purpose of this part, a volunteer whose service has terminated shall be deemed to be a volunteer for a period of 90 days thereafter.

(b) "Grievance" means a matter arising out of, and directly affecting, the volunteer's work situation, or a violation of those regulations governing the terms and conditions of service resulting in the denial or infringement of a right or benefit to the grieving volunteer. Terms and conditions of service refer to those rights and privileges accorded the volunteer either through statute, Agency regulation, or Agency policy.

(1) The relief requested must be directed toward the correction of the matter involving the affected individual volunteer or the affected group of volunteers and may request the revision of existing policies and procedures to ensure against similar occurrences in the future. Requests for relief by more than one volunteer arising from a common cause within one region may be treated as a single grievance. The following are examples of grievable matters:

(i) A volunteer is assigned to an area of harsh climate where special clothing is necessary and not already possessed by the volunteer. A request for a special allowance for such clothing is arbitrarily refused.

(ii) A volunteer submits a request for reimbursement for transportation costs incurred while on authorized emergency leave which is denied.

(iii) The project sponsor fails to provide adequate support to the volunteer necessary for that volunteer to perform the assigned work, such as the sponsor's failure to provide materials to the volunteer which is necessary for the performance of the volunteer's work.

(c) "State Program Officer" means that ACTION official who is directly responsible at the first level for the project in which the volunteer is serving.

(d) "Sponsor" means a public or private nonprofit agency to which ACTION has assigned volunteers.

(e) "Grievance Examiner" or "Examiner" means a person having the qualifications described in Appendix A who is appointed to conduct an inquiry or hearing with respect to a grievance.

(f) "National VISTA Grants Program" means a program operated under Part A, Title I of the Domestic Volunteer Service Act in which ACTION awards a grant to a national grantee to operate a VISTA Volunteer program on a national or multi-regional basis.

(g) "Local component" means a local office or project affiliate of a national grantee which has VISTA Volunteers assigned to it under the National VISTA Grants Program.

(h) The "Act" means the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, (42 U.S.C. 4951 *et seq.*), as amended.

§ 1211.1-4 Policy.

It is ACTION's policy to provide volunteers the widest latitude to present their grievances and concerns to appropriate officials of ACTION and of sponsoring organizations. This regulation is designed to assure that the rights of individual volunteers are recognized and to provide formal ways for them to seek redress with confidence that they will obtain just treatment.

§ 1211.1-5 Matters not covered.

Matters not within the definition of a grievance as defined in § 1211.1-3(b) are not eligible for processing under this procedure. The following are specific examples of excluded areas and are not intended as a complete listing of the matters excluded by this Part:

(a) The establishment of a volunteer project, its continuance or discontinuance, the number of volunteers assigned to it, increases or decreases in the level of support provided to a project, suspension or termination of a project, or selection and retention of project staff.

(b) Matters for which a separate administrative procedure is provided.

(c) The content of any law, published rule, regulation, policy or procedure.

(d) Matters which are, by law, subject to final administrative review outside ACTION.

(e) Actions taken in compliance with the terms of a contract, grant, or other agreement.

(f) The internal management of the ACTION Agency unless such management is specifically shown to individually and directly affect the volunteer's work situation or the terms and conditions of service as defined in § 1211.1-3(b).

§ 1211.1-6 Freedom to initiate grievances.

The initiation of a grievance shall not be construed as reflecting on a volunteer's standing, performance or desirability as a volunteer. ACTION intends that each supervisor and sponsor, as well as ACTION and its employees, maintain a healthy atmosphere in which a volunteer can speak freely and have frank discussions of problems. A volunteer who initiates a grievance shall not as a result of such an action be subjected to restraint, interference, coercion, discrimination or reprisal.

§ 1211.1-7 Entitlement to representation.

A volunteer may be accompanied, represented, and advised by a representative of the volunteer's own choice at any stage of the proceeding. The volunteer shall designate his or her representative in writing. A person chosen by the volunteer must be willing to act as representative and have no conflict between his or her position and the subject matter of the grievance.

§ 1211.1-8 Time for preparation and presentation.

(a) Both a volunteer and a volunteer's representative, if another volunteer or an employee of ACTION, must be given a reasonable amount of administrative leave from their assignments to present a grievance or appeal.

(b) ACTION will not pay travel expense or per diem travel allowances for either a volunteer or his or her representative in connection with the preparation of a grievance or appeal, except in connection with a hearing and the examination of the grievant file as provided in § 1211.1-12(c).

§ 1211.1-9 Access to agency records.

(a) A volunteer is entitled to review any material in his or her official volunteer folder and any relevant Agency documents to the extent permitted by the Freedom of Information Act and the Privacy Act, as amended, 5 U.S.C. 552, U.S.C. 552a. Examples of documents which may be withheld from volunteers include references obtained under a pledge of confidentiality, official volunteer folders of other volunteers, and privileged intra-agency documents.

(b) A volunteer may review relevant documents in the possession of a sponsor to the extent such documents are disclosable under the Freedom of Information Act and Privacy Act.

§ 1211.1-10 Informal grievance procedure.

(a) *Initiation of grievance.* A volunteer may initiate a grievance within 15 calendar days after the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event. A grievance arising out of a continuing condition or practice that individually affects the volunteer may be brought at any time. A volunteer initiates a grievance by presenting it in writing to the chief executive officer of the sponsor, or the representative designated to receive grievances from volunteers. The designated representative may not be the immediate supervisor of volunteers assigned to the sponsor. The chief executive officer of the sponsor or the designated representative shall respond in writing to the grievance within five (5) working days after receipt. The chief executive officer or designee may not refuse to respond to a complaint on the basis that it is not a grievance as defined in § 1211.1-3(b), or that it is excluded from coverage under § 1211.1-5, but may, in the written response, refuse to grant the relief requested on either of these grounds.

If the grievance involves a matter over which the sponsor has no control, or if the chief executive officer is the immediate supervisor of the volunteer, the procedures described in this section may be omitted, and the volunteer may present the grievance in writing directly to the State Director or designee as described in paragraph (b) of this section within the time limits specified in this paragraph (a).

(b) *Consideration by ACTION State Director or designee.* If the matter is not resolved to the volunteer's satisfaction by the sponsor's chief executive officer, the volunteer may submit the grievance in writing to the ACTION State Director or designee within five (5) working days after receipt of the decision of the sponsor's chief executive officer. The State Director or designee may not refuse to receive a complaint, even if he or she believes it does not constitute a grievance, and shall respond to it in writing within five (5) working days after receipt. The response may indicate that the matter is not grievable. If the State Director or designee fails to meet the time limit for response, the volunteer may initiate a formal grievance.

(c) *Discussion.* All parties to the informal grievance procedure must be prepared to participate in full discussion of the grievance, and to permit the participation of others who may have knowledge of the circumstances of the grievance in the discussion. State Program Officers and other ACTION employees may participate in discussions and provide guidance with respect to ACTION policies and procedures, at the request of any party, even prior to submission of a grievance to them.

(d) *Sponsor grievance procedure.* A sponsor may substitute its own grievance procedure for the procedure described in paragraph (a) of this section. Any such procedure must provide the volunteer with an opportunity to present a grievance at least as comprehensive as that contained in this section, must meet the time limits of this section, and must be provided in writing to all volunteers. In order to utilize its own grievance procedures, the sponsor must obtain approval of the procedure from the ACTION State Director and file a copy of this approved procedure with the State Office.

§ 1211.1-11 Initiation of formal grievance procedure.

(a) *Submission of grievance to Regional Director.* If a volunteer is dissatisfied with the response of the State Director or designee required by § 1211.1-10(b), he or she may present the grievance in writing to the Regional Director. To be eligible for the formal grievance procedure, the volunteer must have completed action under the informal procedure contained in § 1211.1-10 or have alleged that the State Director or designee exceeded the time specified for response.

(b) *Contents of grievance.* The volunteer's grievance must be in writing, contain sufficient detail to identify the subject matter of the grievance, specify the relief requested, and be signed by the volunteer or a person designated in writing by the volunteer to be the representative for the purpose of the grievance.

(c) *Time limit.* The volunteer must submit the grievance to the Regional Director or designee no later than 15 calendar days after receipt of the informal response by the State Director or designee. If no response is received by the volunteer 15 calendar days after the grievance is received by the State Director or designee, the volunteer may submit the grievance directly to the Regional Director or designee for consideration.

(d) *Within ten (10) working days of the receipt of the grievance, the Regional Director or designee shall, in whole or in part, either decide it on its merits or reject the grievance.* A grievance may be rejected, in whole or in part, for the following reasons:

(1) It was not filed within the time limit specified in paragraph (c) of this section, or

(2) The grievance consists of matters not contained within the definition of a grievance.

(e) *Rejection of a grievance by the Regional Director or designee may be appealed by the volunteer within ten (10) days of receipt of the notice to the Office of General Counsel.* The Office shall immediately request the grievance file from the Regional Director and, within five (5) working days of receipt of it, determine the appropriateness of the rejection. If the grievance was properly rejected by the Regional Director, the Office shall so notify the volunteer of its opinion and the reasons supporting it, and that such rejection is the final Agency decision in the matter. If the Office determines that the grievance was improperly rejected, it shall return the grievance to the Regional Director for a determination on its merits by the Regional Director. Within ten (10) working days of such notification and receipt of the grievance file, the Regional Director or designee shall notify the volunteer in writing of the decision on the merits and specify the grounds for the decision and of the volunteer's right to appeal.

(f) *Time Limit.* If a volunteer is dissatisfied with the decision of the Regional Director or designee on the merits of the grievance, he or she shall notify the Regional Director within five (5) calendar days from receipt of the decision and request the appointment of an Examiner. If the volunteer receives no response from the Regional Director or Office of General Counsel as required by paragraphs (d) and (e) of this section within five (5) calendar days after the prescribed time limits, the volunteer may request in writing that the Regional Director appoint a Grievance Examiner. Upon receipt of this request, the Regional Director or designee shall appoint within five (5) calendar days an Examiner who shall possess the qualifications specified in Appendix A to this part.

§ 1211.1-12 Investigation by Grievance Examiner.

(a) *Scope of investigation.* The Examiner shall conduct an investigation of a nature and scope appropriate to the issues involved in the grievance.

Unless waived by the volunteer, a hearing must be held if the Examiner finds that the grievance involves disputed questions of fact that go to the heart of the agency determination. Only those facts found necessary by the Examiner on which to base his or her findings go to the heart of the Agency determination.

If the grievance does not involve such disputed questions of fact, or if the volunteer waives a hearing, the Examiner need not hold a hearing but must provide the parties an opportunity for presentation of their respective positions. At the Examiner's discretion, the investigation may include:

(1) The securing of documentary evidence,

(2) Personal interviews, including telephone interviews,

(3) Group meetings,

(4) Affidavits, written interrogatories or depositions.

(b) *Conduct of Hearing.* If a hearing is held, the conduct of the hearing and production of witnesses shall conform with the following requirements:

(1) The hearing shall be held at a time and place determined by the Examiner who shall consider the convenience of parties and witnesses and expense to the Government in making his or her decision.

(2) Attendance at the hearing will be limited to persons determined by the Examiner to have a direct connection with the grievance. If requested by the volunteer, the Examiner must open the hearing to the public.

(3) The hearing shall be conducted so as to bring out pertinent facts, including the production of pertinent records.

(4) Formal rules of evidence shall not be applied strictly, but the Examiner may exclude irrelevant or unduly repetitious testimony or evidence.

(5) Decisions on the admissibility of evidence or testimony shall be made by the Examiner.

(6) Testimony shall be under oath or affirmation, administered by the Examiner.

(7) The Examiner shall give the parties an opportunity to present oral and written testimony that is relevant and material, and to cross-examine witnesses who testify.

(8) The Examiner may exclude any person from the hearing for conduct that obstructs the hearing.

(c) *Witnesses.* (1) All parties are entitled to produce witnesses.

(2) Volunteers, employees of a sponsor, and employees of ACTION shall be made available as witnesses when requested by the Examiner. The Examiner may request witnesses on his or her initiative. Parties shall furnish to the Examiner and to opposing parties a list of proposed witnesses, and an explanation of what the testimony of each is expected to show, at least ten (10) calendar days before the date of the hearing. The Examiner may waive the time limit in appropriate circumstances.

(3) Employees of ACTION shall remain in a duty status during the time they are made available as witnesses.

(4) Volunteers, employees and any other persons who serve as witnesses shall be free from coercion, discrimination or reprisal for presenting their testimony.

(5) The Examiner must authorize payment of travel expenses and per diem at standard Government rates for the volunteer and the representative to attend the hearing. Payment of travel expenses and per diem at standard Government rates for other witnesses to attend the hearing are authorized only after the Examiner determines that the required testimony cannot be satisfactorily obtained by affidavit, written interrogatories, or deposition, at a lesser cost.

(d) *Recording of Hearing.* A grievant may make a recording of the hearing at his or her own expense if no verbatim transcript is made. Such a recording is in no way to be treated as the official transcript of the hearing.

(e) *Report of Hearing.* The Examiner shall normally prepare a written summary of the hearing which shall include all documents and exhibits submitted to and accepted by the Examiner during the course of the grievance. An Examiner may require a verbatim transcript if he or she determines that the grievance is so complex as to require such a transcript. If the hearing is reported verbatim, the Examiner shall make the transcript a part of the record of the proceedings. If the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made part of the record of proceedings. In such cases, the summary together with exhibits shall constitute the report of the hearing. The parties are entitled to submit written exceptions to any part of the summary, and these written exceptions shall be made part of the record of proceedings.

§ 1211.1-13 Grievance file and examiner's report.

(a) *Preparation and content.* The Examiner shall establish a grievance file containing all documents related to the grievance, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. The file shall also contain the Examiner's report of findings and recommendations.

(b) *Review by volunteer.* On completion of the inquiry, the Examiner shall make the grievance file available to the volunteer and the representative, if any, for review and comment. Their coments, if any, shall be submitted to the Examiner within five (5) calendar days after the file is made available and shall be included in the file.

(c) *Examiner's report.* After the volunteer has been given an opportunity to review the grievance file, the Examiner shall submit the complete grievance file to the Director of VISTA.

§ 1211.1-14 Final determination by Director of VISTA.

The Director of VISTA or designee shall issue a written decision on the appeal to the volunteer within ten (10) working days after receipt of the appeal file. The decision shall include a statement of the basis for the determination, and shall be the final Agency decision.

§ 1211.1-15 Disposition of grievance appeal files.

All grievance appeal files shall be retained by the Director of VISTA after the grievance has been settled, or a final decision has been made and implemented. No part of a grievance or appeal file may be made part of, or included in, a volunteer's official folder.

§ 1211.1-16 Grievance procedure for National VISTA Grant Volunteers.

The grievance procedure for National VISTA Grant Volunteers shall be the same as that provided in this part with the following substitutions of officials:

(a) Informal grievance procedure:

(1) The initiation of an informal grievance for a National Grant VISTA, see § 1211.1-10, shall normally be to the sponsor of the local component. If the grievance involves a matter solely within the control of the ACTION State Office, the volunteer may present the grievance to the State Director or designee in lieu of the local component sponsor.

(2) If the volunteer is not satisfied with the response of the appropriate official (sponsor of local component, or State Director or designee), the volunteer may submit the grievance to the chief executive of the national grantee.

(b) Formal grievance procedure:

The Chief, VISTA Program Development Branch or designee shall replace the Regional Director as the official in § 1211.1-11.

APPENDIX A—STANDARDS FOR EXAMINERS

An examiner must meet the requirements specified in either paragraph (1), (2), (3), or (4) of this appendix:

(1) Current or former federal employees now or formerly in grade GS-12 or equivalent, or above who have:

(a) At least four (4) years of progressively responsible experience in administrative, managerial, professional, investigative, or technical work which has demonstrated the possession of:

(i) The personal attributes essential to the effective performance of the duties of an Examiner, including integrity, discretion, reliability, objectivity, impartiality, resourcefulness, and emotional stability.

(ii) A high degree of ability to:

Identify and select appropriate sources of information; collect, organize, analyze, and evaluate information; and arrive at sound conclusions on the basis of that information;

Analyze situations; make an objective and logical determinationn of the pertinent facts; evaluate the facts; and develop practicable recommendations or decisions on the basis of facts;

Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;

Interpret and apply regulations and other complex written material;

Communicate effectively, orally and in writing, including the ability to prepare clear and concise written reports; and

Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.

(iii) A good working knowledge of:

The relationship between volunteer administration and overall management concerns; and

The principles, systems, methods, and administrative machinery for accomplishing the work of an organization.

(2) Designation as an arbitrator on a panel of arbitrators maintained by either the Federal Mediation and Conciliation Service or the American Arbitration Association.

(3) Current or former employment as, or current eligibility on the Office of Personnel Management register for Examiners GS-935-0.

(4) Membership in good standing in the National Academy of Arbitrators.

PART 1212—VOLUNTEER AGENCIES PROCEDURES FOR NATIONAL GRANT VOLUNTEERS—[RESERVED]

PART 1213—ACTION COOPERATIVE VOLUNTEER PROGRAM

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1213.7-2 Death benefits.
1213.7-3 Firearms.

AUTHORITY: Secs. 121, 122, 402 (12) and (14) and 420 of Pub. L. 93-113, 87 Stat. 395, 400, 401, 407 and 414.

SOURCE: 40 FR 10670, Mar. 7, 1975, unless otherwise noted.

Subpart A—General

§ 1213.1-1 Introduction.

(a) Section 122(a), Part C, of the Domestic Volunteer Service Act of 1973 (the Act), Pub. L. 93-113, 87 Stat. 401, authorizes the Director of ACTION to conduct and to make contracts for special volunteer programs to encourage wider volunteer participation on a full-time basis to strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty. The ACTION Cooperative Volunteer Program (ACV) is one of these special volunteer programs. It provides full-time volunteer service opportunities for individuals in assignments with nonprofit and public agency sponsors involving a broad range of human, social, and environmental needs, particularly those related to poverty. Organizations wishing to become sponsors enter into an agreement with ACTION to share expenses associated with ACV volunteer assignments. The sponsor's share consists of reimbursing ACTION for the direct costs of volunteer support, i.e. allowances, stipend and other direct benefits.

(b) Section 122(b) requires that the assignment of ACV volunteers be on such terms and conditions as the Director shall determine.

(c) Section 122(c) provides that the Director may provide to persons serving as full-time volunteers in a program of at least one year's duration such allowances and stipends as he determines are necessary. The kinds and amount of such allowances and stipends may not exceed those authorized to be provided to VISTA volunteers (Part A, Title I, Pub. L. 93-113)

Subpart B—Description of Volunteer Service

§ 1213.2-1 Enrollment and duration of service.

ACTION enrolls an individual in ACV during the preservice processing it provides. Such enrollment is for a period comprising the time of such processing, ACTION preservice orientation, and a one-year assignment to a project.

§ 1213.2-2 Provisional volunteers.

Individuals are considered to be provisional volunteers during the period of pre-service processing and ACTION preservice orientation. They have all the rights and benefits and are subj to all the duties of volunteers, excep as expressly provided in these regula tions or where it would appear from the language of a section of the regulations to be inappropriate.

§ 1213.2-3 Extension of service and reenrollment.

In certain situations, a volunteer may have his period of volunteer service extended for not more than one year, at the request of a sponsor and the concurrence of the appropriate ACTION Regional Director.

A volunteer may only be reenrolled for a period of at least one year. A sponsor must request the reenrollment and it must be approved by the appropriate ACTION Regional Director. No volunteer may serve for more than a total of five years in full-time volunteer programs under Title I of Pub. L. 93-113.

Such extensions and reenrollments may be for the same or different projects and may include interregional and intraregional transfers.

§ 1213.2-4 Living conditions.

To the extent practicable volunteers are expected to make a personal commitment to live among and at the economic level of the people served by the project in which the volunteer works. The sponsor will insure that this commitment is observed.

§ 1213.2-5 Role of the volunteer.

The volunteer's assignments are carried out under the auspices of the sponsor. The volunteer assumes a "live-in" obligation carrying his work into all facets of community life and social activity. He is available for service without regard to regular working hours seven days a week, except for periods of approved leave.

Subpart C—ACTION Provided Volunteer Support

§ 1213.3-1 Financial support.

(a) *Food and lodging.* Each ACV volunteer receives from ACTION a food and lodging allowance approximately commensurate with the actual standard of living of the residents of the community to which he is assigned. The amount of this allowance is determined by the Regional Office after consultation with the sponsor.

(b) *Personal living allowance.* ACTION also provides each volunteer a personal living allowance of $75 per month. It is intended to cover incidental expenses and local travel.

(c) *Adjustment allowance.* At the beginning of service, a volunteer may receive from ACTION an adjustment allowance when necessary to cover the initial cost of securing and setting up living quarters. Such an allowance is usually provided only to volunteers who serve outside their home area. It is not usually available to volunteers recruited locally for an assignment in their home or nearby communities.

(d) *Stipend.* At the conclusion of the term of service, each volunteer receives a stipend of $50 for each month of service on an ACV project. Volunteers may be authorized to make biweekly allotments from the stipend, not in excess of $12.50, in extraordinary circumstances. These may include allotments for obligations incurred prior to service for family support, insurance or loan payments and income taxes.

(e) *Provisional volunteers.* Provisional volunteers do not receive any allowances nor do they accrue stipends. During the period they are provisional volunteers their food and lodging is provided by ACTION and they receive a nominal amount of money for living expenses.

(f) *Emergencies.* In case of emergencies, ACTION may provide the volunteer with assistance and support to prevent injury or hardship to him, including a $500 advance against allowances and stipends due the volunteer or to be paid subsequently to him during his volunteer service.

(g) *No dependent support.* ACTION assumes no financial responsibility for a non-volunteer spouse, a volunteer's children or other dependents.

§ 1213.3-2 Transportation.

ACTION will be responsible for providing the volunteer with needed transportation for the following purposes:

(a) To, and when appropriate, from volunteer/sponsor staging;

(b) To the pre-service processing site, whether it is the ACTION Regional Office or any other designated facility;

(c) To the project site following completion of pre-service processing, and at the beginning of the volunteer's terms of service;

(d) For the return trip from the projects site to the volunteer's home of record following completion of service;

(e) Whenever necessary to enable the volunteer to travel outside the geographic area to which he has been assigned when he does so at the request of the Government;

(f) When approved in cases of emergency.

For the purpose of paragraph (d) of this section, the term "home of record" shall be either:

(1) The legal residence of the volunteer's parent or legal guardian if the volunteer had been residing with the parent or legal guardian immediately prior to entering ACTION service, or if the volunteer was a full-time student whose permanent residency was with the parent or legal guardian.

(2) The residence established by the volunteer while attending college immediately prior to entering ACTION.

(3) The residence established by the volunteer while employed immediately prior to entering ACTION.

(4) The legal residence established by the volunteer for purposes of voting and/or payment of state tax.

Each volunteer must specify a home of record at the time he is enrolled. Subsequent modification of the home of record may be authorized in certain circumstances at the discretion of the Regional Director.

§ 1213.3-3 Health support.

ACTION provides ACV volunteers with a health benefits program at no cost to the volunteers.

Coverage includes most medical and surgical costs, hospitalization, prescription drugs, and emergency dental care. ACTION reserves the right to alter the extent, or the method of providing health care for volunteers. In nonemergency situations, the Regional Office must clear hospitalization or
other serious (in excess of $150) tr
ments.

§ 1213.3-4 Legal support.

ACTION will pay certain legal
penses where volunteers are invol
in criminal or civil judicial or admi
trative proceedings to the extent
vided in Part 1220.

§ 1213.3-5 Insurance.

(a) ACV volunteers are covered
the Federal Employees Compensat
Act. This provides a broad-based w
men's compensation-type coverage
volunteer job-related accidents and
cupational sickness.

(b) ACV volunteers are also Fed
employees for the purpose of the
eral Tort Claims Act. Any third-p
claims for injury or damage to pro
ty arising out of the volunteer's job
lated activities will be treated
claims against the United States.

§ 1213.3-6 Leave.

(a) *Vacation leave.* Once on the
for four months, an ACV volunt
earns one day of leave for each
month of service up to a maximum
seven days, including one weekend.
leave is to be granted during the
month of service, except for emerg
cies. During leave, the volunteer's
ular support allowances are contin
No leave may be taken without the
proval of the sponsor.

(b) *Emergency leave.* Should
member of a volunteer's immed
family—spouse, mother, father, sis
brother, child or guardian—bec
critically ill or die, emergency le
may be granted by the sponsor fo
period of up to one week. Any a
tional time requires the approval
the ACTION Regional Office. It d
not count against vacation leave.
volunteer will be paid for transpo
tion by the fastest scheduled carrie
and from the emergency site and
actual travel expenses incurred,
not in excess of those authorized
standard government travel reg
tions.

§ 1213.3-7 Federal service.

Section 415(c) of the Act prov
that should an ACV volunteer su

quently enter Federal service, his period of volunteer service counts as a like period of Federal service for certain purposes, including job security and retirement benefits.

§ 1213.3-8 Lost property.

(a) The Regional Director may at his discretion reimburse volunteers or trainees for or replace lost, damaged, or stolen property; cash representing certain allowances; and equipment and supplies if:

(1) Reimbursement is essential to the volunteer's capacity to serve effectively in his particular assignment for the duration of his service, and

(2) The loss, damage, or theft did not result from the volunteer's negligence.

(b) Lost or stolen cash may be reimbursed only if it represents the volunteer's food and lodging or living allowance or other payments essential to the volunteer's service. Lost or stolen cash representing payment of stipend or vacation allowances will not be reimbursed.

(c) No reimbursement will be made for luxury items, such as photographic or phonographic equipment or jewelry.

Subpart D—Sponsor Provided Volunteer Support

§ 1213.4-1 Training.

(a) The sponsor is fully responsible for designing and implementing a program of in-service training which will completely equip the volunteer to perform the tasks to which he has been assigned.

(b) In-service training will be conducted by the sponsor in accordance with plans agreed upon during the program development process, and submitted to ACTION as part of the agreement. Those plans must be tailored to the volunteer's needs for additional skills and information in the performance of assigned tasks.

§ 1213.4-2 Supervision.

The sponsor has the sole responsibility for providing appropriate supervision, leadership, and direction to the volunteers in conformance with the plan prepared in cooperation with ACTION and submitted with the project proposal. The plan is to be executed in such a manner that the volunteers can attain project goals within the proposed time frame.

§ 1213.4-3 Job-related transportation.

The sponsor is responsible for determining the job-related transportation needs of the volunteer. The volunteers are expected to use public transportation in connection with their work whenever it is available and adequate. When it is not, the sponsor shall provide suitable private transportation, including obtaining and maintaining motor vehicles for the job-related use of the volunteers as appropriate. Whether the sponsor purchases vehicles or obtains them through a leasing arrangement, he is responsible for monitoring the use of those vehicles and restricting the use of transportation provided to volunteers to work on the project. The volunteer and the sponsor are jointly responsible for compliance with all state and local laws concerning vehicle registration, operator licensing, and financial responsibility on any private vehicles used by the volunteer, either as part of his work assignment or for personal convenience.

§ 1213.4-4 Supplies and equipment and office facilities.

The sponsor is responsible for providing most job-related support involving facilities, equipment, and consumable supplies needed by the volunteer, including telephone and secretarial support.

§ 1213.4-5 Emergencies.

In case of emergencies in which it is not possible for ACTION to provide a volunteer with the necessary assistance and support in time to prevent injury or hardship to him, the sponsor may furnish the needed assistance, including an advance of up to $500 from its own funds to the volunteer. Such advances, however, should be cleared in advance by telephone with the ACTION Regional Director or designee.

Subpart E—Administrative Hold—Grievances, Removal, Resignation, Suspension and Termination

§ 1213.5-1 Administrative hold.

(a) Volunteers will be placed in Administrative Hold Status under the following circumstances:

(1) No placement after training.

(2) Pending transfer to a new project.

(3) Leave taken for personal reasons in excess of the seven days for vacation leave, seven days for emergency leave, seven days for extension beyond three months, and fourteen days for reenrollment.

(4) Absence from project site without authority of the sponsoring organization.

(5) During termination action.

(6) Arrest and placement in jail without bail, depending on nature of charges.

(7) Removal from site at request of sponsoring organization, pending decision on transfer to new assignment.

(b) Exceptions to these guidelines must be authorized by the Regional Director. Volunteers may be placed in Administrative Hold status for up to 30 days. In exceptional circumstances, the Regional Director may extend this period of time as appropriate. The Regional Director may modify any and all allowances, including stipend, when a volunteer is placed in Administrative Hold status.

§ 1213.5-2 Volunteer grievances.

(a) At times, a volunteer will consider that he has been adversely affected in some matter arising out of his work situation or the terms and conditions of his service. The Volunteer Grievance Procedure, Part 1211, furnished to each volunteer, applies to certain of these matters. This procedure is applicable to situations in which the volunteer believes there has been a deviation from, misinterpretation or misapplication of laws, regulations, policies or procedures governing his service.

(b) The Grievance Procedure establishes a formal and informal mechanism to resolve such problems. The informal mechanism aims to resolve disputes at the level of the sponsor and the state program officer. The formal part of the Grievance Procedure provides a hearing in certain cases and includes appeals to ACTION's national office in Washington.

(c) The procedure that the sponsor employs at the informal stage of the ACTION Grievance Procedure will also be used for any disputes between the sponsor and a volunteer not involving a law or regulation or an ACTION policy and procedure.

§ 1213.5-3 Resignation.

A volunteer may resign at any time, by notifying the sponsoring organization and the Regional Office. When practicable, thirty days advance notice should be given to insure that the departure will be only minimally disruptive to the project. In case of resignation, all outstanding advances, including unearned vacation allowances, are deducted from the volunteer's stipend. The volunteer receives his final stipend check three to five weeks after regional submission of the termination papers to ACTION/Washington.

§ 1213.5-4 Sponsor request for removal of volunteer.

The sponsoring organization may request ACTION to remove a volunteer whose performance in its view is unsatisfactory at any time. Before resorting to a formal request for removal the sponsor should contact the appropriate ACTION state official to seek help in trying to resolve any problem with a volunteer. The sponsor may then prepare a written request for removal and submit it to the Regional Office. ACTION may, depending on the circumstances, follow one of three courses of action: (a) Suspend the volunteer, (b) terminate him, or (c) transfer him to another project.

§ 1213.5-5 Suspension and termination.

(a) *Causes.* ACTION may suspend or terminate a volunteer for any of the following reasons:

(1) Conviction of any criminal offense under Federal, state, or local statute or ordinance;

(2) Violation of any provision of the Domestic Volunteer Service Act of

1973, or any ACTION policy, regulation or instruction;

(3) Failure, refusal or inability to perform prescribed project duties as outlined in the project proposal and directed by the sponsoring organization to which the volunteer is assigned;

(4) Involvement in activities which substantially interfere with the volunteer's performance of his/her duties on the project;

(5) Intentional false statement, omission, fraud, or deception in obtaining selection as a volunteer;

(6) Any conduct on the part of the volunteer which substantially diminishes his/her effectiveness as a volunteer;

(7) Inability to perform the project duties because of serious illness, medical disability, or pregnancy, as determined by the attending physician, in accordance with ACTION policy;

(8) Lack of a viable job for which the volunteer is qualified if the initial job assignment ends or is terminated prior to completion of a period of service;

(9) Unsatisfactory job performance. Procedures for the suspension and termination of volunteers are contained in Part 1210.

(b) *Suspension.* Volunteers may be suspended for up to 30 days to enable ACTION to determine whether termination proceedings should be started against the volunteer. Suspension is not warranted if sufficient evidence exists to start termination proceedings.

(c) *Termination of or refusal to renew ACTION/sponsoring organization agreement.* If the Memorandum of Agreement between ACTION and a sponsoring organization is terminated or not renewed, a volunteer who is removed from the project and whose removal was not caused by conduct which would otherwise be grounds for termination is entitled to the following administrative considerations:

(1) Reassignment to another project where possible.

(2) If reassignment is not possible at the time of project close-out, and if the volunteer wishes to resume service (provided that his/her job performance has been satisfactory), he/she may, at the discretion of the Regional Director, receive special consideration for reinstatement as soon as an appropriate slot is open.

If a volunteer wishes, he/she may terminate without prejudice in the event that a Memorandum of Agreement between ACTION and the sponsor is terminated.

(d) *Deselection of a provisional volunteer.* The Regional Director may deselect a provisional volunteer on the grounds listed in paragraph (a) of this section or for a failure to meet training or selection standards during preservice orientation. Procedures for such deselection are contained in Part 1210.

[40 FR 10670, Mar. 7, 1975; 46 FR 6951, Jan. 22, 1981]

Subpart F—Special Conditions Affecting Volunteer Service

§ 1213.6-1 Sponsor's employment of volunteer.

ACV volunteers make a commitment to one full year of ACTION service. Similarly, ACTION asks that the sponsor on his part must honor the spirit of that commitment and refrain from offering fully paid employment to volunteers during their first year of service. Volunteers may not perform services or duties or engage in activities for which the sponsor receives or requests any compensation. Volunteers may not receive any other compensation, directly or indirectly, from a sponsor while serving as a volunteer.

§ 1213.6-2 Nondisplacement of employees and impairment of contracts of service.

An ACV volunteer's assignment is limited to activities that would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service. (Part 1216 implements this provision.)

§ 1213.6-3 Nonappropriate assignments.

(a) An assignment is not appropriate for a volunteer if:

(1) The service, duty, or activity is principally administrative or clerical, or

best copy available

(2) The volunteer is not directly in contact with groups or individuals who are to be served by the project or is not performing services, duties, or engaged in activities which are authorized under section 122(a) of the Act.

§ 1213.6–4 Political activities and limitation of unlawful activities.

(a) ACV volunteers are covered by the Hatch Act to the same extent as Federal employees. This Act prohibits volunteers from engaging in partisan political activities of any sort at any and all times during their terms of service, including periods of official leave.

(b) Section 403 of Pub. L. 93–113 requires that a sponsor's project be operated in such a manner as to avoid involvement of ACV volunteers in any partisan or nonpartisan political activity in an election for public or party office, voter transportation during elections, and voter registration drives.

(c) While engaged in carrying out their duties volunteers may, as a part of the project, participate in lawful and nonpolitical demonstrations and protest activities which are approved by the sponsor as a part of its project activity and which are not in violation of any ACTION policies.

§ 1213.6–5 Nondiscrimination.

Part 1203 provides regulations concerning nondiscrimination in ACTION programs and activities.

(a) No person with responsibilities in the operation of an ACV project shall discriminate with respect to such program because of race, creed, belief, color, national origin, sex, age, or political affiliation.

§ 1213.6–6 Religious activities.

Volunteers will not give religious instruction, conduct worship services, or engage in any other religious activity as part of their duties. Volunteers who serve in an institution that gives religious instruction or engages in other religious activities will not be used as replacements for regular personnel of the institution. For example, volunteers assigned to serve in a program conducted under the auspices of a church-related school may not be used as substitutes for regular teachers in the school. They may, however, work in new programs which are carried on in addition to the school's regular programs and which are conducted in conformance with the above restrictions.

§ 1213.6–7 Evaluation.

(a) On a quarterly basis and two months prior to the termination of a volunteer's year of service, and at any other time which circumstances may dictate, ACTION may inspect that portion of a project with which the volunteer is involved. The purpose of the inspection will be to independently observe and judge the extent to which the volunteer's work has contributed to the objectives of the program described in the project proposal.

(b) The sponsor is expected to cooperate fully with ACTION representatives, and ACTION will in turn review results of the evaluation with the sponsor.

§ 1213.6–8 Limitation on labor and anti-labor activities.

Volunteers may not engage in any activities, services, or duties which assist any labor or anti-labor organizing activity, or related activity.

§ 1213.6–9 Loans and debts.

(a) ACVs have the same legal and financial responsibilities as do all other persons. Volunteers are encouraged to pay all legal debts promptly to avoid creating a situation which would impair the volunteer's ability to function. In cases of continued financial irresponsibility by a volunteer to the extent of embarrassment or adverse reflection upon the sponsor organization's project or ACTION, administrative or disciplinary action may be taken by the Regional Office, up to and including termination, where appropriate.

(b) Volunteers are not authorized to obtain extension of credit by representing themselves as a Federal Government employee.

Subpart G—Miscellaneous

§ 1213.7–1 Student loan deferrals.

(a) The Higher Education Act of 1965, as amended, exempts full-time domestic volunteers from repayment of National Defense Education Act loans for a period of service not to exceed three years. Volunteers wishing to defer repayment of NDEA loans must obtain the necessary forms from their universities. Regional Offices are authorized to certify these forms, but if the university or volunteer should submit the form to Headquarters for certification, it will be sent to the appropriate Regional Office for completion.

(b) If the volunteer is still in service at the time of ACTION's certification, his anticipated termination date will be furnished to the lender.

(c) Repayment of other college loans may also be deferred. These repayments, however, are deferred at the discretion of the lender. If the lender is willing to defer payment, volunteers must obtain the necessary forms from the lender and forward them to the Regional Office for certification. If forms are not available from the lender, a letter to the university or lender may be prepared certifying the dates of the volunteer's service.

§ 1213.7–2 Death benefits.

In case of the death of a volunteer away from his home of record, certain costs associated with transportation of the body are reimbursable either under the Federal Employees Compensation Act or ACTION policy. Volunteers whose death results from personal injury or illness sustained in the performance of his project duties are eligible for reimbursement of certain funeral expenses. Monthly benefits for eligible dependents of deceased volunteers may be available under the Federal Employees Compensation Act. In certain other unusual circumstances, payment of certain funeral expenses for volunteers not meeting the above requirements may be authorized.

§ 1213.7–3 Firearms.

ACTION volunteers may not normally possess, use, or carry firearms. If a volunteer wishes to keep firearms for hunting, approval must be obtained from the sponsor, State Program Director and the ACTION Regional Director in the region where the volunteer is assigned. The volunteer must request approval for possession or use of firearms from his sponsor and his State Program Director. If he receives their approval, his request may then be considered by his ACTION Regional Director. If approval is granted by the ACTION Regional Director, the volunteer must adhere to all state and local regulations relating to the possession and use of firearms.

PART 1215—INSPECTION AND COPYING OF RECORDS: RULES FOR COMPLIANCE WITH PUBLIC INFORMATION ACT

Sec.

1215.1 Purpose.
1215.2 Definitions.
1215.3 Records generally available.
1215.4 Availability of records.
1215.5 Records which may be exempt from disclosure.
1215.6 Manner of requesting records—Appeals.
1215.7 Authority to release and certify records.
1215.8 Location of records.
1215.9 Identification of records.
1215.10 Schedule of fees.

AUTHORITY: Sec. 412, Pub. L. 93-113, 87 Stat. 411 (5 U.S.C. 552).

SOURCE: 40 FR 18558, Apr. 29, 1975, unless otherwise noted.

§ 1215.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, staff manuals, instructions, and other records of ACTION pursuant to 5 U.S.C. 552.

§ 1215.2 Definitions.

As used in this part, the following definitions shall apply:

(a) "The Agency" means ACTION.

(b) "Records" includes all books, papers, maps, photographs, or other documentary material or copies thereof, regardless of physical form or characteristics, made in or received by ACTION and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities, but does not include books, magazines, or other materials acquired solely for library purposes and available to any officially designated library or the agency.

(c) "Identifiable" means, in the context of a request for a record, one which is reasonably described in a manner sufficient to permit the location of the material requested.

(d) "Unit" means an office of the Agency headed by a senior official who shall be responsible for making initial determinations of availability of documents or records requested hereunder. The head of any such Unit may delegate his responsibility hereunder to his Deputy or some other official during any absence of such official. At present, the units of the Agency for the purposes hereof consist of, the Office of the Director; the Office of Domestic and Anti-Poverty Operations; the Office of International Operations; the Office of Policy and Planning; the Office of Administration and Finance; the Office of General Counsel; the Office of Congressional Affairs; the Office of Minority Affairs; the Office of Recruitment and Communications, the ten domestic regional offices, and the three regional offices in the Office of International Operations.

§ 1215.3 Records generally available.

The agency will make promptly available to any member of the public the following documents:

(a) All final opinions and orders made in the adjudication of cases;

(b) Statements of policy and interpretation adopted by the office which have not been published in the FEDERAL REGISTER;

(c) Administrative staff manuals and instructions to the staff which affect a member of the public;

(d) A current index, which shall be updated at least quarterly covering so much of the foregoing materials as may have been issued, adopted or promulgated after July 4, 1967 is maintained by the Agency and copies of same or any portion thereof shall be furnished upon request at a cost not to exceed the cost of duplication. The Agency deems further publication of such index in the FEDERAL REGISTER both unnecessary and impractical.

(e) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details from materials furnished under this section.

(f) Brochures, flyers and other similar material shall be furnished to the extent that same are available copies of any such brochures and flyers which are out of print shall be furnished upon request at the cost of duplication, provided, however, that in the event no copy exists, the Agency shall not be responsible for reprinting the same.

(g) The Agency will not be required to create or compile selected items from its file and records or to provide a requester with statistical or other data unless such data has been compiled by the Agency and is available in the form of a record in which event such record shall be made available as provided in this part.

§ 1215.4 Availability of records.

All records of ACTION, in addition to those ordinarily maintained and disseminated under § 1215.3 hereof requested under 5 U.S.C. 522(a)(3) and reasonably described in any request therefor shall be made promptly available upon request of any member of the public for inspection or copying upon compliance with procedures established in this part except to the extent that a determination is made, in accord with the procedures set forth herein, that a record is exempt from disclosure, and should be withheld in the public interest. All publications and other documents heretofore provided by ACTION in the normal course of business will continue to be made available upon request to the appropriate unit of the agency. No charge will be made for such documents unless necessary by reason of the fact that such document is no longer in print in which case the charge shall not exceed the cost of duplication as set forth herein.

§ 1215.5 Records which may be exempt from disclosure.

The following categories are examples of records maintained by ACTION which, under the provisions of 5 U.S.C. 552(b) may be exempted from disclosure:

(a) Records required to be withheld under criteria established by an Executive Order in the interest of national defense or foreign policy and which are in fact properly classified pursuant to any such Executive Order. Included in this category are records required by Executive Order No. 11652, as amended, to be classified in the interest of national defense or foreign policy.

(b) Records related solely to internal personnel rules and practices. Included in this category are internal rules and regulations relating to personnel management and operations which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant function of the Agency.

(c) Records specifically exempted from disclosure by statute.

(d) Information of a commercial or financial nature including trade secrets given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(e) Interagency or intra-agency memoranda or letters which would not ordinarily be available by law to a party in litigation with the Agency. Included in this category are memoranda, letters, interagency and intraagency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records of deliberations of staff, ordinarily used in arriving at policy determinations and decisions.

(f) Personnel, medical and similar files. Included in this category are personnel and medical information files of staff, volunteer applicants, former volunteers, and volunteers, lists of names and home addresses, and other files or material containing private or personal information, the public disclosure of which would violate a pledge of confidentiality and amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) Investigatory files. Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and ajudicative proceedings, provided however, that such records shall be made available to the extent that their production will not:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by a confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel.

(h) In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section.

(i) Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information might pertain, and that disclosure is not prohibited by law or Executive Order.

§ 1215.6 Manner of requesting records—Appeals.

(a) Requests under the Freedom of Information Act (5 U.S.C. 552) for access to ACTION records may be filed in person or by mail with the Director of Administrative Services of the aforesaid at ACTION headquarters, 806 Connecticut Avenue NW., Washington, DC 20525. Requests for records of a domestic regional or state office may be filed in person or by mail with the records officer of the respective Domestic Regional Office. All requests and the envelope in which they are sent must be plainly marked "FOI Request". Personal requests will be received from between 10 a.m. and 4 p.m., Monday through Friday, except for official holidays.

(b) Requested records which are reasonably described shall either be made available within ten working days after receipt of any such request or a written notice that the request cannot be complied with shall be provided to the person making such request within such 10 day period. Any such notice of inability to comply shall specify the reasons for refusal and the right of the person making such request to appeal such adverse determination. In the event a request for a record or document is made to a Regional Records Officer of the Agency or to the Director of Administrative Services, and such office does not have the requested material, the requester shall be immediately so notified. Such notice shall specify the Regional or other office of the Agency where such material is to be found or where it is normally maintained. The requester may then resubmit his request, or request the office which provides the notice to forward the original request to the proper Domestic Regional Office or the central office as may be appropriate. The request shall be deemed received when actually received by the appropriate office.

(c) Upon receipt of a notice of failure to comply, a person making a request for information, records, or documents may, within 15 calendar days from the receipt of such notice, appeal such adverse determination to the Deputy Director of ACTION. Such appeal shall be in writing and shall specify the date upon which the notice of failure or refusal to comply was received by the person making such request. The Deputy Director shall make determination with respect to such appeal within 20 working days after receipt of such appeal. Notice of such determination shall be provided to the person making the request in writing. If the original denial of the request for records is upheld in whole or in part, such notice shall include notification of the right of the person making such request to have judicial review of the denial and appeal as provided under the Freedom of Information Act (5 U.S.C. 552).

(d) The time limits specified above for initial compliance, and appeal from a refusal to comply, may be extended by the Agency upon written notice to the person making such request which notice shall set forth the reasons for such extension and the date upon which determination is expected. Such extension may be applied at either the initial stage or the appellate stage, or both, provided that the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension shall include the following:

(1) Time necessary to search and collect requested records from segments of the agency separate from the office processing the request;

(2) Time necessary to search, collect and appropriately examine a voluminous number of records demanded in a single request; or

(3) Time necessary for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency which have an interest in the subject matter of the request.

(e) The time limits provided in this section are mandatory and a person requesting records shall be deemed to have exhausted his administrative remedies with respect to such request in the event the Agency fails to comply within the said applicable time limit provisions as extended in accord with this section. In unusual circumstances in which additional time is necessary to collect and review the records requested, the Act provides that a court of appropriate jurisdiction may allow the agency additional time for such purpose. Alternatively, the Agency and the person making such request may agree as to a reasonable time for completion of Agency work upon such request.

(f) Any notification of denial of any request for record under this subsection shall set forth the names and titles or positions of the person primarily responsible for the denial of such request.

(g) Upon receipt of a request for a record or document the Director of the Office of Administrative Services or the Regional Records Officer will promptly make an initial determination as to whether the request for the record reasonably describes such record with sufficient specificity to determine the unit of the Agency to which such request should be referred. Upon making such initial determination, he shall immediately refer such request to the head of the unit concerned. Upon receipt of the request the head of the unit shall promptly determine whether the description of the record contained in the request is sufficient to permit its identification and production.

(h) If the Director of Administrative Services, the Regional Records Officer or the head of the unit concerned determines that the description contained in the request is not sufficient to reasonably describe the record requested, the requester shall be so advised and shall be permitted to amend the request to provide any additional information which would better identify the record. The requester shall be provided with appropriate assistance from the head of the unit concerned, the Director of Administrative Services, the Regional Records Officer or any member of their staff. A request which is amended in accord herewith shall be deemed to have been received by the Agency on the date of receipt of the amended request.

(i) If the head of the unit concerned determines that the record requested is reasonably described so as to permit its identification, he shall make it available unless he determines, after consultation with the General Counsel, that:

(1) The record is exempt from disclosure and

(2) It should be withheld in the public interest or to protect the rights of persons to whom the information pertains. When such a determination is made the requester shall be immediately notified in writing as provided herein.

(j) ACTION/Peace Corps offices overseas are not responsible for maintenance of any indexes, documents, or records other than materials normally kept and maintained in such offices. Insofar as they do have any materials, they will make them available upon written or oral request of citizens of the United States who are present in their respective countries addressed to the Director, Peace Corps, c/o American Embassy in the applicable country. Such requests shall be treated informally and as expeditiously as possible. In the event any such request is received for information which might be exempt from disclosure under the provisions of § 1215.5 hereof, a copy of the material and the request together with any recommendation shall be forwarded to the Director of Administrative Services for reference to the Associate Director for International Operations and the General Counsel. Such a request shall be considered received upon receipt in the office of the Director of Administrative Services.

(k) ACTION maintains offices in most States, usually in the State capitol. These offices are not responsible for maintaining indexes, reading rooms, or other records or documents other than those normally kept and maintained in such offices. Insofar as they do have any materials, they will make them available upon written or oral request directed to the State Director. Such requests shall be treated informally and as expeditiously as possible. State Directors shall not deny any request for information which reasonably describes the material sought without the approval of the Regional Director and the Office of General Counsel. In the event the State Director determines and is advised that requested information should be withheld, he shall inform the requester to make a formal request to the proper Regional Office or the Director of Administrative Services, for appropriate determination. Requests made to other domestic ACTION offices or facilities shall be handled in the same manner.

§ 1215.7 Authority to release and certify records.

(a) Authority is hereby delegated to the Director of Administrative Services, Office of Administration and Finance, to furnish, pursuant to these regulations, copies of records to any person entitled thereto, and upon request to provide certified copies thereof for use in judicial proceedings or other official matters as provided below.

(b) The Director of Administrative Services and his deputy, are hereby designated to act as authentication officers. When the authentication officer is unavailable, any other person within such office delegated by the Director may act in his place and stead. The authentication officer is hereby authorized to sign and initial certificates of authentication for and in the name of the Director of ACTION. The form of authentication shall be as follows:

In testimony whereof, I ——————, Director of ACTION, have hereunder caused my name to be subscribed by the authentication officer of said agency at —————— this ——— day of —————, 19——.

—————————
Director of ACTION.

By, ——————————————
Authentication Officer, ACTION.

(c) The authentication officer is also hereby authorized to issue such statements, certificates, or other documents as may be required in connection with judicial proceedings or other official matters to show that, after thorough search of ACTION records, a requested record has not been found (See Rule 44(b), Federal Rules of Civil Procedure).

(d) Each Domestic Regional Director of ACTION shall designate a records officer who shall have the same authority as the Director of Administrative Services with respect to documents and records kept and maintained in Regional or State offices. Such records officers shall be responsible to the Director of Administrative Services for such reports as he may require with respect to the production and copying of records.

§ 1215.8 Location of records.

(a) The Agency will maintain a central records room at its headquarters in Washington, D.C. The headquarters of ACTION is presently located at 806 Connecticut Avenue NW., Washington, D.C. The present location of the central records room shall be the ACTION library, the location of which may change from time to time. The specific location of the library may be determined by requesting such information from the ACTION receptionist in the Office of the Director of ACTION.

(b) The Agency has domestic regional offices in the following places:

Region I
John W. McCormack Federal Building
Room 1420
Boston, Massachusetts 02109

Region II
26 Federal Plaza
New York, New York 10007

Region III
320 Walnut Street
Philadelphia, Pennsylvania 19106

Region IV
730 Peachtree Street, NE.
Atlanta, Georgia 30308

Region V
1 North Wacker Drive
Chicago, Illinois 60606

Region VI
212 No. St. Paul Street
Dallas, Texas 75201

Region VII
Two Gateway Center
4th & State Street
Kansas City, Kansas 66101

Region VIII
Prudential Plaza Building
1050 17th St.
Denver, Colorado 80202

Region IX
100 McAllister Street
San Francisco, California 94102

Region X
1601 Second Avenue
Seattle, Washington 98101

Although it may not always be feasible in these offices to set aside rooms for the exclusive or primary use of the public, every reasonable effort will be made to accommodate members of the public who wish to use regional office facilities for the purpose of inspecting and copying records. The office will also endeavor to maintain and have readily available in its regional offices general materials relating to the Agency available in the central records room. The Regional Records Officer shall receive and handle requests submitted pursuant to this part.

§ 1215.9 Identification of records.

(a) In order for the Agency to locate records and make them available it is necessary that it be able to identify the specific records sought. Persons wishing to inspect or secure copies of records should therefore seek to describe and identify them as fully and as accurately as possible. In cases where requests are submitted which are not sufficient to permit identification, the records officer receiving the request will endeavor to assist the person seeking the records in filling in necessary details.

(b) Among the kinds of information which a person seeking records should try to provide in order to permit an identification of a record are the following:

(1) The unit or program of the Agency which may be responsible for or may have produced the record such as VISTA, Peace Corps, or UYA.

(2) The specific event or action, if any, and if known, to which the record refers.

(3) The date of the record or the period to which it refers or relates if known.

(4) The type of record, such as an application, a contract, a grant or a report.

(5) Personnel of the office who may have prepared or have knowledge of the record.

(6) Citation to newspapers or publications which are known to have referred to the record.

§ 1215.10 Schedule of fees.

(a) It is the policy of ACTION to encourage the widest possible distribution of information concerning programs under its jurisdiction. To the extent practicable, that policy will be applied under this part so as to permit requests for inspection or copies of records to be met without substantial cost to the person making the request. If a request for information does not involve substantial search time or reproduction costs, the information will be furnished without charge as a service to the public.

(b) The following charges will be made for any copies requested by a requester:

(1) Copies made by photostat or otherwise (per page)—$.10.

(2) Search services shall be charged for at the rate of $5 per hour. Such charge may be made whether or not the search is successful in producing the record requested.

(3) In the event a request for documents or records is received which does not state that the requestor will pay any and all reasonably necessary costs, or costs up to an amount specified in such request, and the head of the unit or the Director of Administrative Services determines that the anticipated cost for search and duplication of the records requested will be in excess of $25, or in excess of the limit specified in the request, the Director of Administrative Services shall so advise the requester promptly after receipt of the initial request. Such notification shall specify the anticipated cost of search and reproduction of the records requested. The requester may thereafter amend his request to specify fewer documents, or agree to accept the estimate of anticipated costs, in which case the request shall be deemed received by the Agency upon the date of the requester's response. A requester may, prior to making a request, ask for an estimate of cost from the Director of Administrative Services who shall promptly respond to such request.

(4) Payment shall be made to the Director of Administrative Services by cash or personal check, money order, etc., payable to ACTION. A receipt for any fees will be provided upon request.

(5) A requester may ask in his original request, or subsequently, that documents requested be furnished without charge or at a reduced charge. Upon receipt of such request the Director of Administrative Services shall refer such request to the Deputy Director or such official as he may designate who shall promptly determine whether such request should be complied with. Such request shall be complied with in event that it is determined that a waiver or reduction of fees is in the public interest because the furnishing of the documents or records requested will primarily benefit the general public. When such a request has been included in a request

for documents or records or has been made subsequent thereto, the request shall not be deemed to have been received until a determination on the question of waiver or reduction has been made, provided however, that such determination shall be made within five working days from the date of receipt of any such request. A request for waiver or reduction of fees shall specify the amount of reduction requested and the reasons which cause the requester to feel that the public interest would be served by a waiver or reduction of fees.

PART 1216—NONDISPLACEMENT OF EMPLOYED WORKERS AND NONIMPAIRMENT OF CONTRACTS FOR SERVICE

Sec.
1216.1-1 Purpose.
1216.1-2 Applicability of this part.
1216.1-3 Policy.
1216.1-4 Exceptions.

AUTHORITY: Secs. 402(12), 404(a), 420 of Pub. L. 93-113, 87 Stat. 394, 408, 414.

SOURCE: 40 FR 16209, Apr. 10, 1975, unless otherwise noted.

§ 1216.1-1 Purpose.

This part establishes rules to assure that the services of volunteers are limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of, or result in the displacement of, employed workers or impair existing contracts for service. It implements section 404(a) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113 (the "Act").

§ 1216.1-2 Applicability of this part.

(a) All full-time and part-time volunteers assigned, referred or serving pursuant to grants, contracts, or agreements made pursuant to the Act.

(b) All agencies and organizations to which the volunteers in paragraph (a) of this section are assigned, referred or provide services.

§ 1216.1-3 Policy.

(a) Volunteers enrolled or participating in programs referred to in paragraphs (a) and (b) of § 1216.1-2 may not perform any services or duties or engage in activities which would otherwise be performed by an employed worker as part of his assigned duties as an employee.

(b) Volunteer referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which will supplant the hiring of employed workers. This prohibition is violated if, prior to engaging a volunteer, an agency or organization referred to in § 1216.1-2(c) had intended to hire a person to undertake all or a substantial part of the services, duties, or other activities to be provided by the volunteer.

(c) Volunteers referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which result in the displacement of employed workers. Such volunteers may not perform services or duties which have been performed by or were assigned to, any of the following:

(1) Presently employed workers,

(2) Employees who recently resigned or were discharged,

(3) Employees who are on leave (terminal, temporary, vacation, emergency, or sick), or

(4) Employees who are on strike or who are being locked out.

(d) Volunteers referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which impair existing contracts for service. This prohibition is violated if a contract for services is modified or cancelled because an agency or organization referred to in § 1216.1-2(b) engages a volunteer to provide or perform all or a substantial part of any services, duties, or other activities set forth in such contract. The term "contract for services" includes but is not limited to contracts, understandings and arrangements, either written or oral, to provide professional, managerial, technical, or administrative services.

(e) Agencies and organizations referred to in § 1216.1-2(b) are prohibited from assigning or permitting volunteers referred to in § 1216.1-2(a) to perform any services or duties or engage in any activities prohibited by paragraphs (a) through (d) of this section.

§ 1216.1-4 Exceptions.

(a) The requirements of § 1216.1-3 are not applicable to the following, or similar, situations:

(1) Funds are unavailable for the employment of sufficient staff to accomplish a program authorized or of a character eligible for assistance under the Act and the activity, service, or duty is otherwise appropriate for the assignment of a volunteer.

(2) Volunteer services are required in order to avoid or relieve suffering threatened by or resulting from major natural disasters or civil disturbances.

(3) Reasonable efforts to obtain employed workers have been unsuccessful due to the unavailability of persons within the community who are able, willing, and qualified to perform the needed activities.

(4) The assignment of volunteers will significantly expand services to a target community over those which could be performed by existing paid staff, and the activity, service or duty is otherwise appropriate for the assignment of a volunteer and no actual displacement of paid staff will occur as a result of the assignment.

(b) For the purposes of paragraphs (a)(1) and (4) of this section, the assignment is not appropriate for the assignment of a volunteer if:

(1) The service, duty, or activity is principally a routine administrative or clerical task. This definition applies only to any service, duty, or activity performed by a volunteer receiving financial support apart from reimbursement for expenses.

(2) The volunteer is not directly in contact with groups or individuals whom the Act is designed to serve or is not performing services, duties, or engaged in activities authorized or of a character eligible for assistance under the Act.

PART 1217—VISTA VOLUNTEER LEADER

Sec.
1217.1 Introduction.
1217.2 Establishment of position.
1217.3 Qualifications.
1217.4 Selection procedure.
1217.5 Allowances and benefits.
1217.6 Roles of volunteers.

AUTHORITY: Secs. 104(b) and 420 of Pub. L. 93-113, 87 Stat. 398 and 414.

SOURCE: 39 FR 44203, Dec. 23, 1974, unless otherwise noted.

§ 1217.1 Introduction.

Section 105(a)(1), Part A, of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 398, authorizes the Director of ACTION to pay VISTA volunteers a stipend not to exceed $50 per month and a stipend not to exceed $75 a month in the case of VISTA volunteers who have served for at least a year and have been designated volunteer leaders. Section 105(a)(1) further provides that the selection of volunteer leaders shall be pursuant to standards, established in regulations which the Director shall prescribe, which shall be based upon the experience and special skills and the demonstrated leadership of such persons among volunteers.

§ 1217.2 Establishment of position.

A request for the proposed establishment of VISTA volunteer leader position for a specific project shall be submitted by a sponsor in writing in advance to the appropriate ACTION Regional Director. Specific tasks, responsibilities, qualifications, and the proposed supervisory structure are to be detailed in the request.

§ 1217.3 Qualifications.

A volunteer recommended for a VISTA volunteer leader position must have:

(a) Completed a one-year term as a VISTA volunteer.

(b) Demonstrated ability to work constructively and communicate with volunteers, supervisor/sponsor, and the target population.

(c) Demonstrated ability to work well with and gain acceptance of other volunteers.

(d) Demonstrated ability to provide self-motivation and self-direction, and maturity to accept supervision and direction from supervisor/sponsor.

(e) Sensitivity to the needs and attitudes of others, and exhibit a sincere commitment to the mission of VISTA.

§ 1217.4 Selection procedure.

(a) *Nomination.* Candidates may be nominated in writing to the Regional Director by the Program Officer or the State Program Director in whose area the volunteer serves. The nomination shall include a copy of the completed ACTION Form V-95a, for the Regional Director's review.

(b) *Selection.* VISTA volunteer leaders will be selected by the Regional Director (or his designee). The criteria for selection shall include:

(1) The recommendation of the volunteer by the State Program Director or Program Officer.

(2) An overall rating by the supervisor/sponsor of above average on the ACTION Form V-95a.

(3) A description of specific tasks, responsibilities, qualifications, and the proposed supervisory structure, which justifies the establishment of the VISTA volunteer leader position. A selection decision is final.

(c) *Reenrollment.* VISTA volunteer leaders may be reenrolled in accordance with the VISTA reenrollment and extension policy.

§ 1217.5 Allowances and benefits.

The VISTA volunteer leader shall be entitled to all allowances and benefits of a VISTA volunteer at the level which is consistent with the level for all volunteers on his/her project, except that:

(a) The stipend will be increased from $50 to $75 per month effective on the date of selection of the VISTA volunteer leader.

(b) Support for on-the-job transportation may be increased, consistent with ACTION policy.

§ 1217.6 Roles of volunteers.

VISTA volunteer leaders may have the following roles:

(a) Primary contact with VISTA volunteers on personal and administrative matters.

(b) Aid in communication of VISTA policies to VISTA volunteers.

(c) Encourage and develop VISTA volunteer leadership and initiative on projects.

(d) Aid as a resource in development and conduct of training programs.

(e) Assist sponsor in preparation fo arrival of VISTA volunteers, and assis new volunteers in settling-in, housin orientation, etc.

(f) Aid in the development of mear ingful relationship and understandin of individual program concepts wit VISTA volunteers and supervisor sponsor.

(g) Advise supervisor on potentia problem areas, and needs of VIST volunteers.

(h) Aid supervisor/sponsor in the r development of projects to best mee goals and objectives addressing th community's problem(s).

PART 1218—VISTA VOLUNTEERS— HEARING OPPORTUNITY

Sec.

1218.1 Introduction.
1218.2 Applicability.
1218.3 Policy.
1218.4 Standards for regional plan.
1218.5 Procedures for approval of plan.
1218.6 Freedom to present views.

Authority: Secs. 104(d), 402(14) and 42 of Pub. L. 93-113, 87 Stat. 398, 407 and 41

Source: 39 FR 43725, Dec. 18, 1974, unles otherwise noted.

§ 1218.1 Introduction.

Section 104(d) of the Domestic Vol unteer Service Act of 1973, Pub. L. 93 113, 87 Stat. 398 requires that the Di rector of ACTION establish a proce dure, including notice and an opportu nity to be heard, for VISTA volunteer to present views in connection wit the terms and conditions of their serv ice.

§ 1218.2 Applicability.

This part applies to all volunteer enrolled under Part A of Title I of th Domestic Volunteer Service Act o 1973, Pub. L. 93-113, 87 Stat. 396.

§ 1218.3 Policy.

It is ACTION's policy to encourag the free exchange of views betwee volunteers and staff members with r spect to the terms and conditions o the volunteers' service. Ordinaril these exchanges occur in the day-t day contact between volunteers an staff. However, there are occasion when it is desirable to provide volunteers with an opportunity to present their views with respect to the terms and conditions of their service in a more formal way. The differences between ACTION regions require that the means selected in each region to accomplish this result be appropriate to its particular needs. This regulation provides standards within which regions must establish a procedure to enable volunteers to present their views to be heard with respect to the terms and conditions of their service on a regular basis by appropriate ACTION officials and receive a timely response to their concerns.

§ 1218.4 Standards for regional plan.

Each ACTION Domestic Regional Director shall recommend, after consultation with representative volunteers, sponsors, and other interested persons, the specific procedures to be established for VISTA volunteers to present their views concerning the terms and conditions of their service. Each proposed plan must incorporate the following features:

(a) A free and open opportunity for volunteers to communicate their views to appropriate ACTION regional office officials.

(b) An opportunity for all volunteers to be heard with respect to their views in connection with the terms and conditions of their service by a responsible ACTION regional office official, either personally, or through democratically selected representatives, on a regular basis. The plan must provide such an opportunity to the volunteer at least twice in each year, and provide for notice to volunteers of the time and place of the meeting at which they may be heard.

(c) Appropriate provisions with respect to volunteers' or volunteers' representatives travel expense and per diem which enable the volunteers or their representatives to attend and present their views to the regional office officials at scheduled meetings.

(d) Response to volunteer's views by appropriate ACTION officials in a prescribed period of time.

(e) Summary reports by each Regional Director to the Deputy Associate Director for VISTA and ACTION Education Programs of problems and concerns expressed by volunteers concerning terms and conditions of their service and action taken in response to such problems and concerns.

(f) An opportunity for any volunteer who feels that his/her concerns have not been properly addressed to communicate the same to the Regional Director. Such communication shall be included in the Regional Director's report to the Deputy Associate Director and shall be reviewed by him.

§ 1218.5 Procedures for approval of plan.

Each Regional Director shall submit the plan for his region to the Deputy Associate Director, VISTA and ACTION Education Programs for approval.

Approval by the Deputy Associate Director for VISTA and ACTION Education Programs of the proposed regional plan shall be based upon:

(a) The adequacy of the procedures to provide for systematic and open communication of volunteers' views regarding terms and conditions of their service; and

(b) The adequacy of the procedures to provide for effective and efficient resolution of volunteers' problems or concerns regarding terms and conditions of their service.

§ 1218.6 Freedom to present views.

The expression by a volunteer of his views with respect to the terms and conditions of his service shall not be construed as reflecting on a volunteer's standing, performance or desirability as a volunteer. ACTION intends that its programs be conducted in an atmosphere in which volunteers can speak freely, and frankly discuss problems. Nor shall a volunteer who represents such views be subjected to restraint, interference, coercion, discrimination or reprisal because of presentation of his views.

PART 1219—COMPETITIVE SERVICE ELIGIBILITY

Sec.
1219.1 Introduction.
1219.2 Policy.
1219.3 Procedure.

AUTHORITY: Secs. 415(d) and 420 of Pub. L. 93-113, 87 Stat. 412 and 414.

SOURCE: 39 FR 42915, Dec. 9, 1974, unless otherwise noted.

§ 1219.1 Introduction.

Section 415(d), Title IV, of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 412, provides that VISTA Volunteers who have successfully completed their period of service shall be eligible for appointment in the Federal competitive service in the same manner as Peace Corps Volunteers as prescribed in Executive Order No. 11103 (April 10, 1963). This section further provides that the Director of ACTION shall determine who has successfully completed his period of service in accordance with regulations he shall prescribe.

§ 1219.2 Policy.

Certificates of satisfactory service for the purpose of this order shall be issued only to persons who have completed at least one full year of service as a full-time Volunteer under Part A of Title I of the Domestic Volunteer Service Act of 1973 (or Title VIII of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2991-2994d), and who have not been terminated for cause.

§ 1219.3 Procedure.

(a) The Deputy Associate Director for VISTA and Anti-Poverty Programs will ensure that each eligible VISTA Volunteer is promptly notified of his eligibility for competitive service, prior to the completion of his service.

(b) The Deputy Associate Director for VISTA and Anti-Poverty Programs (or his designee) shall, upon the request of a duly recognized representative of any agency in the Executive Branch, certify the VISTA Volunteer's service on ACTION Form A-507.

PART 1220—PAYMENT OF VOLUNTEER LEGAL EXPENSES

Subpart A—General

Sec.
1220.1-1 Introduction.

Subpart B—Criminal Proceedings

1220.2-1 Full-time volunteers.
1220.2-2 Part-time volunteers.
1220.2-3 Procedure.

Subpart C—Civil and Administrative Proceedings

1220.3-1 Full-time volunteers.
1220.3-2 Part-time volunteers.
1220.3-3 Procedure.

AUTHORITY: Secs. 419 and 420 of Pub. L. 93-113, 87 Stat. 413 and 414.

SOURCE: 40 FR 28880, July 9, 1975, unless otherwise noted.

Subpart A—General

§ 1220.1-1 Introduction.

Section 419 of the Domestic Volunteer Service Act of 1973 (the Act), Pub. L. 93-113, 87 Stat. 413, authorizes the Director of ACTION to pay expenses incurred in judicial and administrative proceedings for the defense of full-time or part-time volunteers serving under the Act. These include counsel fees, court costs, bail or other expenses incidental to the volunteer's defense. For part-time volunteers, section 419 provides that the proceeding must arise directly out of the performance of activities pursuant to the Act.

Subpart B—Criminal Proceedings

§ 1220.2-1 Full-time volunteers.

(a)(1) ACTION will pay all reasonable expenses for defense of full-time volunteers up to and including arraignment in Federal, state, and local criminal proceedings, except in cases where it is clear that the charged offense results from conduct which is not related to his service as a volunteer.

(2) Situations where conduct is clearly unrelated to a volunteer's service are those that arise either:

(i) In a period prior to volunteer service,

(ii) Under circumstances where the volunteer is not at his assigned volunteer project location, such as during periods of administrative, vacation, or emergency leave, or

(iii) When he is at his volunteer station, but the activity or action giving rise to the charged offense is clearly not part of, or required by, such assignment.

(b) Reasonable expenses in criminal proceedings beyond arraignment may be paid in cases where:

(1) The charge against the volunteer relates to his assignment or status as a volunteer, and not his personal status or personal matters. A charge relating to a volunteer's assignment arises out of any activity or action which is a part of, or required by, such assignment. A charge relating to a volunteer's status is motivated exclusively by the fact that a defendant is a volunteer.

(2) The volunteer has not admitted a willful or knowing violation of law, and

(3) The charge(s) is not a minor misdemeanor, such as a minor vehicle violation for which a fine or bail forfeiture will not exceed $100.

(c) Notwithstanding the foregoing, there may be situations in which the criminal proceeding results from a situation which could give rise to a civil claim under the Federal Tort Claims Act. In such situations, the Justice Department may agree to defend the volunteer. In those cases, unless there is a conflict between the volunteer's interest and that of the government, ACTION will not pay for additional private representation for the volunteer.

§ 1220.2-2 Part-time volunteers.

(a) With respect to a part-time volunteer, ACTION will reimburse a sponsor for the reasonable expenses it incurs for the defense of the volunteer in Federal, state and local criminal proceedings, including arraignment, only under the following circumstances:

(1) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(2) The volunteer receives, or is eligible to receive, compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses, under an ACTION grant project; and

(3) The conditions specified in paragraphs (b) (2) and (3) in § 1220.2-1 are met.

(b) In certain circumstances volunteers who are ineligible for reimbursement of legal expenses by ACTION may be eligible for representation under the Criminal Justice Act (18 U.S.C. 3006A).

§ 1220.2-3 Procedure.

(a) Immediately upon the arrest of any volunteer under circumstances in which the payment of bail to prevent incarceration or other serious consequences to the volunteer or the retention of an attorney prior to arraignment is necessary and is covered under § 1220.2-1 or § 1220.2-2, sponsors shall immediately notify the appropriate ACTION state office or if the state office cannot be reached, the appropriate regional office. The regional office shall provide each sponsor with a 24-hour telephone number.

(b) Immediately after notification of the appropriate office, and with the approval thereof, the sponsor shall advance up to $500 for the payment of bail or such other legal expenses as are necessary prior to arraignment to prevent the volunteer from being incarcerated. In the event it is subsequently determined that ACTION or a sponsor is not responsible under this policy for the volunteer's defense, any such advance may be recovered directly from the volunteer or from allowances, stipends, or out-of-pocket expenses which are payable or become payable to the volunteer. In the case of a grassroots sponsor of full-time volunteers which is not able to provide the $500 the ACTION state or regional office shall immediately make such sum available to the sponsor.

(c) Immediately upon receipt of notification from the sponsor, the state or regional office shall notify the General Counsel, giving all facts and circumstances at that time known to such office. Thereafter the office shall cooperate with the General Counsel in making an investigation of all surrounding facts and circumstances and shall provide such information immediately to the General Counsel.

(d) The General Counsel shall, upon notification by the state or regional office, determine the extent to which ACTION will provide funds for the volunteer's defense or reimburse a sponsor for funds it spends on the volunteer's behalf. Included in this responsibility shall be the negotiation of fees and approval of other costs and expenses. State and regional offices are not authorized to commit ACTION to the payment of volunteers' legal expenses or to reimburse a sponsor except as provided above, without the express consent of the General Counsel. Additionally, the General Counsel shall, in cases arising directly out of the performance of authorized project activities, ascertain whether the services of the United States Attorney can be made available to the volunteer.

(e) The sponsor and the state and regional office shall have a continuing responsibility for cooperation and coordination with the Office of General Counsel during the pendency of any such litigation, and of notifying the General Counsel of any facts and circumstances which come to the attention of such office or the sponsor which affects such litigation.

Subpart C—Civil and Administrative Proceedings

§ 1220.3-1 Full-time volunteers.

ACTION will pay reasonable expenses incurred in the defense of full-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

(a) The complaint or charge against the volunteer is directly related to his volunteer service and not to his personal activities or obligations.

(b) The volunteer has not admitted willfully or knowingly pursuing a course of conduct which would result in the plaintiff or complainant initiating such a proceeding, and

(c) If the judgment sought involves a monetary award, the amount sought exceeds $100.

§ 1220.3-2 Part-time volunteers.

ACTION will reimburse sponsors for the reasonable expenses incidental to the defense of part-time volunteers in Federal, state and local civil judicial and administrative proceedings where:

(a) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(b) The volunteer receives or is eligible to receive compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses under an ACTION grant; and

(c) The conditions specified in paragraphs (b) and (c) in § 1220.3-1 are met.

§ 1220.3-3 Procedure.

Immediately upon the receipt by a volunteer of any court papers or administrative orders making him a part to any proceeding covered under § 1220.3-1 or § 1220.3-2, the volunteer shall immediately notify his sponsor who in turn shall notify the appropriate ACTION state office. The procedures referred to in § 1220.2-3, paragraphs (c) through (e), shall thereafter be followed as appropriate.

PART 1222—PARTICIPATION OF PROJECT BENEFICIARIES

Sec.
1222.1 Purpose.
1222.2 Applicability.
1222.3 Policy.
1222.4 Advisory group responsibilities.
1222.5 Advisory group expenses.
1222.6 Sponsor's responsibilities.

AUTHORITY: Secs. 106 and 420 of Pub. L. 93-113, 87 Stat. 398 and 414.

SOURCE: 40 FR 57217, Dec. 8, 1975, unless otherwise noted.

§ 1222.1 Purpose.

The purpose of these regulations is to prescribe requirements for the establishment of a continuing mechanism for the meaningful participation of project beneficiaries in the planning, development, and implementation of project activities utilizing full-time volunteers authorized under Title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113. This policy specifically implements Section 106, Title I, Pub. L. 93-113.

§ 1222.2 Applicability.

These regulations apply to all full-time volunteer programs and projects under Title I, Pub. L. 93-113, including grant programs. Included in these programs are VISTA (Part A), University Year for ACTION (UYA) (Part B), ACTION Cooperative Volunteers (ACV) and Program for Local Services (PLS) (Part C).

§ 1222.3 Policy.

(a) Each potential project sponsor shall establish an advisory group for the project, to include substantial membership of potential project beneficiaries or, to the extent feasible, their democratically chosen representatives, prior to the submission of an application to ACTION for volunteers.

(b) The term "substantial" means, in this case, a sufficient number of appropriate persons to assure that the concerns and points of view of the potential project beneficiaries are adequately presented and considered in the deliberations of the group. The phrase "project beneficiaries" means, in this case, recipients of benefits accruing directly from project activities as conducted by ACTION Volunteers.

(c) Potential sponsoring organizations that have an established governing, policy, or advisory group whose membership is composed of at least 50% of members of the beneficiary population are not required to establish a separate project advisory group for the purposes of these regulations.

§ 1222.4 Advisory group responsibilities.

The advisory group shall have the following responsibilities for the intent and purposes of these requirements:

(a) To the extent practical, assist the sponsor in the initial planning of a new project proposal and in the planning of a continuation project application.

(b) To review and provide written comments concerning any project application prior to the submission of the application to ACTION. A copy of such comments shall accompany each application to ACTION.

(c) To meet with the sponsoring organization's staff at periodic intervals, but no less than twice per project year, for the purpose of reviewing and commenting on the development and implementation of the project. Such project review and commentary should be directed toward the adequacy of the project to meet the identified needs of the project beneficiaries.

(d) To submit, if it so chooses, written reports and/or copies of minutes of its meetings to the sponsor to accompany the Sponsor's Quarterly Program Report (A-568) submitted to the appropriate ACTION regional office.

§ 1222.5 Advisory group expenses.

As permitted by law, ACTION regional staff may pay for certain incidental out-of-pocket expenses incurred by the advisory group in connection with its responsibilities under § 1222.4.

§ 1222.6 Sponsor's responsibilities.

The sponsor or potential sponsor shall furnish the following evidence of the advisory group's participation in the planning, development, and implementation of the project:

(a) Each new application to ACTION for volunteers shall contain a statement describing how the advisory group has participated in the planning of the project proposal. This statement shall be signed by an authorized representative of the Advisory group (see § 1222.4-2). For continuation project applications, a written statement shall be included which specifies how the advisory group complied with its responsibilities under § 1222.4 of these regulations. This statement shall be signed by an authorized representative of the advisory group (see § 1222.4-2 and 3).

(b) In each Sponsor's Quarterly Program Report (A-568), the sponsor shall include a brief statement describing the extent to which the advisory group was involved in the continuing development and implementation of the project.

PART 1224—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

1224.1-1 Purpose.
1224.1-2 Policy.
1224.1-3 Definitions.
1224.1-4 Disclosure of records.
1224.1-5 Annual notices.
1224.1-5a New uses of information.
1224.1-6 Reports regarding changes in systems.
1224.1-7 Use of social security account number in records systems. [Reserved]
1224.1-8 Rules of conduct.
1224.1-9 Records systems—Management and control
1224.1-10 Security of records systems—Manual and automated systems.
1224.1-11 Accounting for disclosure of records.
1224.1-12 Contents of records systems.
1224.1-13 Access to records.
1224.1-14 Specific exemptions.
1224.1-15 Identification of requestors.
1224.1-16 Amendment of records and appeals with respect thereto.
1224.1-17 Denial of access and appeals with respect thereto.
1224.1-18 Fees.

AUTHORITY: Pub. L. 93-579, 5 U.S.C. 552a.

SOURCE: 42 FR 54286, Oct. 5, 1977, unless otherwise noted.

§ 1224.1-1 Purpose.

The purpose of this part is to set forth the basic policies of ACTION governing the maintenance of systems of records containing personal information as defined in the Privacy Act (5 U.S.C. 552a). Records included in this part are those described in aforesaid Act and maintained by ACTION and/or any component thereof.

§ 1224.1-2 Policy.

It is the policy of ACTION to protect, preserve and defend the right of privacy of any individual as to whom the agency maintains personal information in any system records and to provide appropriate and complete access to such records including adequate opportunity to correct any errors in said records. It is further the policy of the agency to maintain its records in such a fashion that the information contained therein is and remains material and relevant to the purposes for which it is received in order to maintain its records with fairness to the individuals who are the subject of such records.

§ 1224.1-3 Definitions.

(a) "Record" means any document or other information about an individual maintained by the agency whether collected or grouped and including but not limited to information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information which contains the name or other personal identification number, symbol, etc. assigned to such individual.

(b) "System of Records" means a group of any records under the control of the agency from which information is retrieved by use of the name of an individual or by some identifying number, symbol, or other identifying particular of whatsoever kind or nature.

(c) "Routine Use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(d) The term "agency" means ACTION and/or any component thereof.

(e) The term "individual" means any citizen of the United States or an alien lawfully admitted to permanent residence.

(f) The term "maintain" includes the maintenance, collection, use or dissemination of any record.

§ 1224.1-4 Disclosure of records.

The agency will not disclose any personal information from systems of records it maintains to any individual other than the individual to whom the record pertains, or to another agency, without the express written consent of the individual to whom the record pertains, or his agent or attorney, except in the following instances:

(a) To officers or employees of ACTION having a need for such record in the official performance of their duties.

(b) With respect to records which should follow an employee in transfer situations, to the personnel office of a different agency as a result of a transfer or a potential transfer of the individual to whom the record pertains.

(c) When required under the provisions of the Freedom of Information Act (5 U.S.C. 552).

(d) For routine uses as appropriately published in the annual notice of the FEDERAL REGISTER.

(e) To the Bureau of the Census for uses pursuant to Title 13.

(f) To an individual or agency having a proper need for such record for statistical research provided that such record is transmitted in a form which is not individually identifiable and that an appropriate written statement is obtained from the person to whom the record is transmitted stating the purpose for the request and a certification under oath that the records will be used only for statistical purposes.

(g) To the National Archives of the United States as a record of historical value under rules and regulations of the Archives as may be established by the Administrator of General Services or his designee.

(h) To an agency or instrumentality of any governmental jurisdiction within the control of the United States for civil or criminal law enforcement purposes provided however that the head of any such agency instrumentality has made a written request for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. Such a record may also be disclosed by the agency to the law enforcement agency on its own initiative in situations in which criminal conduct is suspected provided that such disclosure has been established as a routine use or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(i) In emergency situations upon a showing of compelling circumstances affecting the health or safety of any individual provided that after such disclosure notification of such disclosure must be promptly sent to the last known address of the individual to whom the record pertains.

(j) To either House of Congress or to a subcommittee or committee (joint or of either house) to the extent the subject matter falls within their jurisdiction.

(k) To the comptroller general or any of his authorized representatives in the course of the performance of his duties of that of the General Accounting Office.

(l) Pursuant to an order of a court of competent jurisdiction provided that if any such record is disclosed under such compulsory legal process and subsequently made public by the court which issued it, the agency must make a reasonable effort to notify the individual to whom the record pertains of such disclosure.

§ 1224.1-5 Annual notices.

The agency shall publish annually a notice of all systems of records maintained by it as defined herein in the format prescribed by the General Services Administration in the FEDERAL REGISTER, *Provided, however,* That such publication shall not be made for those systems of records maintained by other agencies though in the temporary custody of this agency.

§ 1224.1-5a New uses of information.

At least 30 days prior to publication of information under the preceding section, the agency shall publish in the FEDERAL REGISTER a notice of its intention to establish any new routine use of any system of records maintained by it with an opportunity for public comments on such use. Such notice shall contain the following:

(a) The name of the system of records for which the routine use is to be established.

(b) The authority for the system.

(c) The purpose for which the record is to be maintained.

(d) The proposed routine use(s).

(e) The purpose of the routine use(s).

(f) The categories of recipients of such use. In the event of any request for an addition to the routine uses of the systems which the agency maintains, such request may be sent to the following officer: Director, A&F/AS, ACTION, 806 Connecticut Avenue NW., Washington, DC 20525.

§ 1224.1-6 Reports regarding changes in systems.

The agency shall provide to Congress, the Office of Management and Budget, and the Privacy Protection Commission advance notice of any proposal to establish or alter any system of records as defined herein. This report will be submitted in accord with guidelines to be provided by the Office of Management and Budget.

§ 1224.1-7 Use of social security account number in records systems. [Reserved]

§ 1224.1-8 Rules of conduct.

(a) The Head of the agency shall assure that all persons involved in the design, development operation or maintenance of any systems of records as defined herein are informed of all requirements necessary to protect the privacy of individuals who are the subject of such records. All employees shall be informed of all implications of the Act in this area including the criminal penalties provided under 5 U.S.C. 552a and the fact that agency may be subject to civil suit for failure to comply with the provisions of the Privacy Act and these regulations.

(b) The Head of the agency shall also ensure that all personnel having access to records receive adequate training in the protection of the security of personal records and that adequate and proper storage is provided for all such records with sufficient security to assure the privacy of such records.

§ 1224.1-9 Records systems—Management and control.

(a) The Director of Administrative Services (A&F) shall have overall control and supervision of the security of all records keeping systems and shall be responsible for monitoring the security standards set forth in these regulations.

(b) A designated official (System Manager) shall be named who shall have management responsibility for each record system maintained by the agency and who shall be responsible for providing protection and accountability for such records at all times and for insuring that such records are secured in appropriate containers whenever not in use or in the direct control of authorized personnel.

§ 1224.1-10 Security of records systems—Manual and automated systems.

The Head of the agency has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained including all reports and outputs from such systems which contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data and must furthermore minimize to the extent practicable the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in records systems as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or without the agency.

(2) All records systems when not under the personal control of the employees authorized to use same must be stored in an appropriate metal filing cabinet. Where appropriate, such cabinet shall have three position dial-type combination lock, and/or be equipped with a steel lock bar secured by a GSA approved changeable combination padlock or in some such other securely locked cabinet as may be approved by GSA for the storage of such records. Certain systems are not of such confidential nature that their disclosure would harm an individual who is the subject of such record. Records in this category shall be maintained in steel cabinets without the necessity of combination locks.

(3) Access to and use of systems of records shall be permitted only to persons whose official duties require such

access within the agency, for routine uses as defined in subpart B herein as to any given system, or for such other uses as may be provided herein.

(4) Other than for access within the agency to persons needing such records in the performance of their official duties or routine users as defined in Subpart B herein or such other uses as provided herein, access to records within systems of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to a designated personal representative.

(5) Access to areas where records systems are stored will be limited to those persons whose official duties require work in such areas and proper accountings of removal of any records in storage areas in the form directed by the Director, A&F/AS, shall be maintained at all times.

(6) The agency shall assure that all persons whose official duties who require access to and use of records contained in records systems are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within records systems shall be in accord with rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automatic data systems only where facilities or conditions are adequate to prevent unauthorized access to such system in any form. Whenever such data whether contained in punch cards, magnetic tapes or discs are not under the personal control of an authorized person such information must be stored in a metal filing cabinet having a built-in three postion combination lock, a metal filing cabinet equipped with a steel lock bar secured with a GSA approved combination padlock, or in adequate containers or in a secured room or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose official duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose official duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be carried on by shredding, burning or in the case of tapes or discs, degaussing, in accord with any regulations now or hereafter proposed by the GSA or other appropriate authority.

§ 1224.1-11 Accounting for disclosure of records.

Each office maintaining a system of records shall account for all records within such system by keeping a written log in the form prescribed by the Director, A&F/AS, containing the following information:

(a) The date, nature, and purpose of each disclosure of a record to any person or to another agency. Disclosures made to employees of the agency in the normal course of their official duties, or pursuant to the provisions of the Freedom of Information Act need not be accounted for.

(b) Such accounting shall contain the name and address of the person or agency to whom the disclosure was made.

(c) The accounting shall be maintained in accord with a system approved by the Director, A&F/AS, as sufficient for the purpose but in any event sufficient to permit the construction of a listing for all disclosures at appropriate periodic intervals.

(d) The accounting shall reference any justification or basis upon which any release was made including any written documentation required when records are released for statistical or law enforcement purposes under the provisions of subsection (b) of the Privacy Act of 1974 (5 U.S.C. 552a).

(e) For the purpose of this part, the system of accounting for disclosures is not a system of records under the definitions hereof and no accounting need be maintained for the disclosure of accounting of disclosures.

§ 1224.1-12 Contents of records systems.

The agency shall maintain in any records contained in any records system hereunder only such information about an individual as is accurate, relevant, and necessary to accomplish the purpose for which the agency acquired the information as authorized by statute or Executive Order.

(a) In situations in which the information may result in adverse determinations about such individuals' rights, benefits and privileges under any Federal program, all information placed in records systems shall, to the greatest extent practicable, be collected from the individual to whom the record pertains.

(b) Each form or other document which an individual is expected to complete in order to provide information for any records system shall have appended thereto, or in the body of the document:

(1) An indication of the authority authorizing the solicitation of the information and whether the provision of the information is mandatory or voluntary.

(2) The purpose or purposes for which the information is intended to be used.

(3) Routine uses which may be made of the information and published pursuant to § 1224.1-6 of this regulation.

(4) The effect on the individual if any of not providing all or part of the required or requested information.

(c) Records maintained in any system of record used by the agency to make any determination about any individual shall be maintained with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the making of any determination about such individual, provided however, that the agency shall not be required to update or keep current retired records.

(d) Before disseminating any record about any individual to any person other than an agency, unless the dissemination is made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) the agency shall make reasonable efforts to assure that such records are, or were at the time they were collected, accurate, complete, timely and relevant for agency purposes.

(e) Under no circumstances shall the agency maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the first amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.

(f) In the event any record is disclosed as a result of the order of a court of appropriate jurisdiction, the agency shall make reasonable efforts to notify the individual whose record was so disclosed after the process becomes a matter of public record.

§ 1224.1-13 Access to records.

(a) Upon request of any individual about whom a record is maintained addressed to the Director of Administrative Services, 806 Connecticut Avenue NW., Washington, DC 20525, in person during regular business hours, or by mail, access to his record or to any information contained therein shall be provided.

(b) If the request is made in person, such individual may, upon his request, be accompanied by a person of his choosing to review the record and shall be provided an opportunity to have a copy made of all or any record about such individual.

(c) A record may be disclosed to a representative chosen by the individual as to whom a record is maintained upon proper written consent of such individual.

(d) Request made in person will be promptly complied with if the records sought are in the immediate custody of ACTION. Mailed requests or personal requests for documents in storage or otherwise not immediately available, will be acknowledged within ten working days, and the information requested will be promptly provided thereafter.

(e) With regard to any request for disclosure of record the following procedure shall apply:

(1) Medical or psychological records shall be disclosed to an individual unless in the judgment of the agency, access to such records might have an adverse effect upon such individual. When such determinaion has been made, the agency may require that the information be disclosed only to a physician chosen by the requesting individual. Such physician shall have full authority to disclose all or any portion of such record to the requesting individual in the exercise of his professional judgment.

(2) Test material and copies of certificates or other lists of eligibles or any other listing, the disclosure of which would violate the privacy of any other individual, or be otherwise proscribed by the provision of the Privacy Act of 1974, shall be removed from the record before disclosure to any individual to whom the record pertains.

§ 1224.1-14 Specific exemptions.

Records or portions of records specified below shall be exempt from disclosure provided however that no such exemption shall apply to the provisions of § 1224.1-16(d)(3) hereof (informing prior recipient of corrected or disputed records), § 1224.1-12(a) (collecting information directly from the individual to whom it pertains); § 1224.1-12(b) (informing individuals asked to supply information of the purposes for which it is collected and whether it is mandatory); § 1224.1-12(c) (maintaining records with accuracy, completeness, etc. as reasonably necessary for agency purposes); § 1224.1-12(f) (notifying the subjects of records disclosed under compulsory court process); § 1224.1-16(g) (civil remedies). With the above exceptions the following material shall be exempt from disclosure to the extent indicated:

(a) Material considered classified and exempt from disclosure under the provisions of section 552(b)(1) of the Freedom of Information Act (5 U.S.C. 552).

(b) Investigatory material compiled for the purposes of law enforcement provided, however, that if such information is to be used for the basis for denial of any right, privilege or benefit to which such individual would be entitled by Federal law or otherwise, such material shall be provided to the such individual except to the extent necessary to protect the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence, or prior to the effective date of the Privacy Act of 1974, under an implied promise of such source.

(c) Required by statute to be maintained and used solely as statistical records.

(d) Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualification for service as an employee or volunteer or for the obtaining of a Federal contract or for access to classified information; *Provided, however*, that such material shall be disclosed to the extent possible without revealing the identity of a source who furnished information to the government under an express promise of the confidentiality of his identity or, prior to the effective date of the Privacy Act of 1974, under an implied promise of such confidentiality of identity.

(e) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(f) An individual shall not have a right of access to any information compiled by the agency in reasonable anticipation of a civil action or proceeding.

The above specific exemptions from disclosure are made for the purpose of protecting the confidentiality of classified information, sources who furnish information for law enforcement purposes or selection purposes for volunteer service or employment, and to protect the integrity of any system of tests or examinations for Federal service or advancement therein.

§ 1224.1-15 Identification of requestors.

The agency shall require reasonable identification of all individuals who request access to records to assure that records are disclosed to the proper person.

(a) In the event an individual requests disclosure in person, such individual shall be required to show an identification card such as a drivers license etc., containing a photo and a sample signature of such individual. Such individual may also be required to sign a statement under oath as to his or her identity acknowledging that he or she is aware of the penalties for improper disclosure under the provisions of the Privacy Act of 1974.

(b) In the event that disclosure is requested by mail, the agency may request such information as may be necessary to reasonably assure that the individual making such request is properly identified. In certain cases, the agency may require that a mail request be notarized with an indication that the notary received an acknowledgment of identity from the individual making such request.

(c) In the event an individual is unable to provide suitable documentation or identification, the agency may require a signed notarized statement asserting the identity of the individual and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

(d) In the event a requestor wishes to be accompanied by another person while reviewing his or her records, the agency may require a written statement authorizing discussion of his or her records in the presence of the accompanying representative or other persons.

§ 1224.1-16 Amendment of records and appeals with respect thereto.

A request for inspection of any record shall be made to the Director, A&F/Administrative Services, 806 Connecticut Avenue NW., Washington, DC 20525. Such request may be made by mail or in person provided however that requests made in person may be required to be made upon a form to be provided by the Director of Administrative Services. The Director of Administrative Services shall keep a current list of systems of records maintained by the agency and published in accordance with the provisions of these regulations. Requests as to record systems maintained in Regional Offices may be addressed to the appropriate Regional Office, Attention the Regional Records Officer, in person or by mail. A requesting individual may request that the agency compile all records pertaining to such individual at any named Regional Office or at the Central Office in Washington, D.C., for such individual's inspection and/or copying. In the event an individual makes such request for a compilation of all records pertaining to him in various locations, appropriate time for such compilation shall be provided as may be necessary to promptly comply with such requests.

Any such requests should contain, at a minimum, identifying information needed to locate any given record and a brief description of the item or items of information required in the event the individual wishes to see less than all records maintained about him.

(a) In the event an individual after examination of his record desires to request an amendment of such records, he may do so by addressing such request to the Director of Administrative Services. The Director of Administrative Services shall provide assistance in preparing any such amendment upon request and a written acknowledgement of receipt of such request within 10 working days from the receipt thereof from the individual who requested the amendment. Such acknowledgment may, if necessary, request any additional information needed to make a determination with respect to such request. If the agency makes a determination to comply with such request within such 10-day period, no written acknowledgement is necessary, provided however that a certification of such change shall be provided to such individual within such period.

(b) Promptly after acknowledgment of the receipt of a request for an amendment the agency shall take one of the following actions:

(1) Make any corrections of any portion of the record which the individual believes is not accurate, relevant, timely or complete.

(2) Inform the individual of its refusal to amend the record in accord with the request together with the reason for such refusal and the procedures established for requesting review of such refusal by the head of the agency or his designee. Such notice shall include the name and business address of such official.

(3) Refer the request to the agency that has control of and maintains the record in those instances where the record requested remains the property of the controlling agency and not of ACTION.

(c) In reviewing a request to amend the record the agency shall assess the accuracy, relevance, timeliness and completeness of the record with due and appropriate regard for fairness to the individual about whom the record is maintained. In making such determination, the agency shall consult criteria for determining record quality published in pertinent chapters of the Federal Personnel Manual and to the extent possible shall accord therewith.

(d) In the event the agency agrees with the individual's request to amend such record, it shall:

(1) Advise the individual in writing;

(2) Correct the record accordingly; and

(3) Advise all previous recipients of a record which was corrected of the correction and its substance.

(e) In the event the agency, after an initial review of the request to amend a record, disagrees with all or a portion of it, the agency shall:

(1) Advise the individual of its refusal and the reasons therefore;

(2) Inform the individual that he or she may request further review in accord with the provisions of these regulations; and

(3) The name and address to whom the request should be directed.

(f) In the event an individual requestor disagrees with the initial agency determination, he or she may appeal such determination to the Deputy Director of the Agency or his designee. Such request for review must be made within 30 days after receipt by the requestor of the initial refusal to amend.

(g) If after review the Deputy Director or his designee refuses to amend the record as requested he shall advise the individual requester of such refusal and the reasons for same; of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency in the record; of the procedures for filing a statement of disagreement and of the fact that such statement so filed will be made available to anyone to whom the record is subsequently disclosed together with a brief statement of the agency summarizing its reasons for refusal, if the agency decides to place such brief statement in the record. The agency shall have the authority to limit the length of any statement to be filed, such limit to depend upon the record involved. The agency shall also inform such individual that prior recipients of the disputed record will be provided a copy of both statements of dispute to the extent that the accounting of disclosures has been maintained and of the individual's right to seek judicial review of the agency's refusal to amend the record.

(h) If after review the official determines that the record should be amended in accordance with the individual's request the agency shall proceed as provided above in the event a request is granted upon initial demand.

(i) Final agency determination of an individual's request for a review shall be concluded within 30 working days from the initial request excluding the period of time between receipt by such individual of the initial denial and his or her filing of a request for review provided however that the Deputy Director or his designee may determine that fair and equitable review cannot be made within that time. If such circumstances occurs, the individual shall be notified of the additional time required in writing and of the approximate date on which determination of the review is expected to be completed.

§ 1224.1-17 Denial of access and appeals with respect thereto.

In the event that the agency finds it necessary to deny any individual access to a record about such individual pursuant to provisions of the Privacy Act or of these regulations, a response to the original request shall be made in writing within ten working days from the date of such initial request. The denial shall specify the reasons for such refusal or denial and advise the individual of the reasons therefore, and of his or her right to an appeal within the agency and/or judicial review under the provisions of the Privacy Act.

(a) In the event an individual desires to appeal any denial of access, he may do so in writing by addressing such appeal to the attention of the Deputy Director, ACTION, c/o the Director, AF/Administrative Services, 806 Connecticut Avenue NW., Washington, DC 20525. Although there is no time limit for such appeals, ACTION shall be under no obligation to maintain copies of original requests or responses thereto beyond 180 days from the date of the original request.

(b) The Deputy Director, or his designee, shall review a request from a denial of access and shall make a determination with respect to such appeal within 20 days after receipt thereof. Notice of such determination shall be provided to the individual making the request in writing. If such appeal is denied in whole or in part, such notice shall include notification of the right of the person making such requests to have judicial review of the denial as provided in the Privacy Act (5 U.S.C. 552a).

§ 1224.1-18 Fees.

No fees shall be charged for search time or for any other time expended by the agency to produce a record. Copies of records may be charged for at the rate of 10 cents per page provided that one copy of any record shall be provided free of charge.

PART 1225—VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

Subpart A—General Provisions

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AUTHORITY: Secs. 417, 402(14), 420, Pub. L. 93-113, 87 Stat. 398, 407, and 414; Sec. 5(a), Pub. L. 87-293, 75 Stat. 613; Executive Order 12137, issued May 16, 1979.

SOURCE: 46 FR 1609, Jan. 6, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 1225.1 Purpose.

The purpose of this part is to establish a procedure for the filing, investigation, and administrative determination of allegations of discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, which arise in connection with the recruitment, selection, placement, service, or termination of Peace Corps and ACTION applicants, trainees, and Volunteers for full-time service.

§ 1225.2 Policy.

It is the policy of Peace Corps and ACTION to provide equal opportunity in all its programs for all persons and to prohibit discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, in the recruitment, selection, placement, service, and termination of Peace Corps and ACTION Volunteers. It is the policy of Peace Corps and ACTION upon determining that such prohibited discrimination has occurred, to take all necessary corrective action to remedy the discrimination, and to prevent its recurrence.

§ 1225.3 Definitions.

Unless the context requires otherwise, in this Part:

(a) "Director" means the Director of Peace Corps for all Peace Corps applicant, trainee, or Volunteer complaints processed under this Part, or the Director of ACTION for all domestic applicant, trainee, or Volunteer complaints processed under this Part. The term shall also refer to any designee of the respective Director.

(b) "EO Director" means the Director of the Equal Opportunity Division of the Office of Compliance, ACTION. The term shall also refer to any designee of the EO Director.

(c) "Illegal discrimination" means discrimination on the basis of race, color, national origin, religion, age, sex, handicap or political affiliation as defined in Section 5(a) of the Peace Corps Act (22 U.S.C. 2504); Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000-16); Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791, et seq.); and the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.). Further clarification of the scope of matters covered by this definition may be obtained by referring to the following regulations: Sex Discrimination: 29 CFR Part 1604; Religious Discrimination: 29 CFR Part 1605; National Origin Discrimination: 29 CFR Part 1606; Age Discrimination: 45 CFR Part 90; Handicap Discrimination: 29 CFR 1613.701 through 1613.707.

(d) "Applicant" means a person who has submitted to the appropriate agency personnel a completed application required for consideration of eligibility for Peace Corps or ACTION volunteer service. "Applicant" may also mean a person who alleges that the actions of agency personnel precluded him or her from submitting such an application or any other information reasonably required by the appropriate personnel as necessary for a determination of the individual's eligibility for volunteer service.

(e) "Trainee" means a person who has accepted an invitation issued by Peace Corps or ACTION and has registered for Peace Corps or ACTION training.

(f) "Volunteer" means a person who has completed successfully all necessary training; met all clearance standards; has taken, if required, the oath prescribed in either Section 5(j) of the Peace Corps Act (22 U.S.C. 2504), or Section 104(c) of the Volunteer Service Act of 1973, as amended (42 U.S.C. 104(c)) and has been enrolled as a full-time Volunteer by the appropriate agency.

(g) "Complaint" means a written statement signed by the complainant and submitted to the EO Director. A complaint shall set forth specifically and in detail:

(1) A description of the Peace Corps or ACTION management policy or practice, if any, giving rise to the complaint;

(2) A detailed description including names and dates, if possible, of the actions of the Peace Corps or ACTION officials which resulted in the alleged illegal discrimination;

(3) The manner in which the Peace Corps or ACTION action directly affected the complainant; and

(4) The relief sought.

A complaint shall be deemed filed on the date it is received by the appropriate agency official. When a complaint does not conform with the above definition, it shall nevertheless be accepted. The complainant shall be notified of the steps necessary to correct the deficiencies of the complaint. The complainant shall have 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint.

(h) "Counselor" means an official designated by the EO Director to perform the functions of conciliation as detailed in this part.

(i) "Agent" means a class member who acts for the class during the processing of a class complaint. In order to be accepted as the agent for a class complaint, in addition to those requirements of a complaint found in § 1225.3(g) of this part, the complaint must meet the requirements for a class complaint as found in Subpart C of these regulations.

§ 1225.4 Coverage.

(a) These procedures apply to all Peace Corps or ACTION applicants, trainees, and Volunteers throughout their term of service with the Peace Corps or ACTION. When an applicant, trainee, or Volunteer makes a complaint which contains an allegation of illegal discrimination in connection with an action that would otherwise be processed under a grievance, early termination, or other administrative system of the agency, the allegation of illegal discrimination shall be processed under this part. At the discretion of the appropriate Director, any other issues raised may be consolidated with the discrimination complaint for processing under these regulations. Any issues which are not so consolidated shall continue to be processed under those procedures in which they were originally raised.

(b) The submission of class complaints alleging illegal discrimination as defined above will be handled in accordance with the procedure outlined in Subpart C.

§ 1225.5 Representation.

Any aggrieved party may be represented and assisted in all stages of these procedures by an attorney or representative of his or her own choosing. An aggrieved party must immediately inform the agency if counsel is retained. Attorney fees or other appropriate relief may be awarded in the following circumstances:

(a) Informal adjustment of a complaint. An informal adjustment of a complaint may include an award of attorney fees or other relief deemed appropriate by the EO Director. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney fees or costs should be awarded, or on their amount, this issue may be appealed to the appropriate Director to be determined in the manner detailed in § 1225.11 of this part.

(b) Final Agency Decision. When discrimination is found, the appropriate Director shall advise the complainant that any request for attorney fees or costs must be documented and submitted for review within 20 calendar days after his or her receipt of the final agency decision. The amount of such awards shall be determined under § 1225.11. In the unusual situation in which it is determined not to award attorney fees or other costs to a prevailing complainant, the appropriate Director in his or her final decision shall set forth the specific reasons thereof.

§ 1225.6 Freedom from reprisal.

Aggrieved parties, their representatives, and witnesses will be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage described in § 1225.8 of this part, or any time thereafter.

§ 1225.7 Review of allegations of reprisal.

An aggrieved party, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this part, may, if covered by this part, request in writing that the allegation be reviewed as an individual complaint of discrimination subject to the procedures described in Subpart B or that the allegation be considered as an issue in the complaint at hand.

Subpart B—Processing Individual Complaints of Discrimination

§ 1225.8 Precomplaint procedure.

(a) An aggrieved person who believes that he or she has been subject to illegal dicrimination shall bring such allegations to the attention of the appropriate Counselor within 30 days of the alleged discrimination to attempt to resolve them. The process for notifying the appropriate Counselor is the following:

(1) Aggrieved applicants, trainees or Volunteers who have not departed for overseas assignments, or who have returned to Washington for any administrative reason shall direct their allegations to the EO Director for assignment to an appropriate Counselor.

(2) Aggrieved trainees or Volunteers overseas shall direct their allegations to the designated Counselor for that post.

(3) Aggrieved applicants, trainees, and Volunteers applying for, or enrolled in ACTION domestic programs shall direct their allegations to the designated Counselor for that Region.

(b) Upon receipt of the allegation, the Counselor or designee shall make whatever inquiry is deemed necessary into the facts alleged by the aggrieved party and shall counsel the aggrieved party for the purpose of attempting an informal resolution agreeable to all parties. The Counselor will keep a written record of his or her activities which will be submitted to the EO Director if a formal complaint concerning the matter is filed.

(c) If after such inquiry and counseling an informal resolution to the allegation is not reached, the Counselor shall notify the aggrieved party in writing of the right to file a complaint of discrimination with the EO Director within 15 calendar days of the aggrieved party's receipt of the notice.

(d) The Counselor shall not reveal the identity of the aggrieved party who has come to him or her for consultation, except when authorized to do so by the aggrieved party. However, the identity of the aggrieved party may be revealed once the agency has accepted a complaint of discrimination from the aggrieved party.

§ 1225.9 Complaint procedure.

(a) *EO Director.* (1) The EO Director must accept a complaint if the process set forth above has followed, and the complaint states a charge of illegal discrimination. The agency will extend the time limits set herein (a) when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or (b) the complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter in a timely fashion, or (c) for other reasons considered sufficiently by the agency. At any time during the complaint procedure, the EO Director may cancel a complaint because of failure of the aggrieved party to prosecute the complaint. If the complaint is rejected for failure to meet one or more of the requirements set out in the procedure outlined in § 1225.8 or is cancelled, the EO Director shall inform the aggrieved party in writing of this Final Agency Decision; that the Peace Corps or ACTION will take no further action; and of the right, to file a civil action as described in § 1225.21 of this part.

(2) Upon acceptance of the complaint and receipt of the Counselor's report, the EO Director shall provide for the prompt investigation of the complaint. Whenever possible, the person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, and any other circumstances which may constitute, or appear to constitute discrimination against the complainant. The investigator shall compile an investigative file, which includes a summary of the investigation, recommended findings of fact and a recommended resolution of the complaint. The investigator shall forward the investigative file to the EO Director and shall provide the complainant with a copy.

(3) The EO Director shall review the complaint file including any additional statements provided by the complainant, make findings of fact, and shall offer an adjustment of the complaint if the facts support the complaint. If the proposed adjustment is agreeable to all parties, the terms of the adjustment shall be reduced to writing, signed by both parties, and made part of the complaint file. A copy of the terms of the adjustment shall be provided the complainant. If the proposed adjustment of the complaint is not ac-

ceptable to the complainant, or the EO Director determines that such an offer is inappropriate, the EO Director shall forward the complaint file with a written notification of the findings of facts, and his or her recommendation of the proposed disposition of the complaint to the appropriate Director. The aggrieved party shall receive a copy of the notification and recommendation and shall be advised of the right to appeal the recommended disposition to the appropriate Director. Within ten (10) calendar days of receipt of such notice, the complainant may submit his or her appeal of the recommended disposition to the appropriate Director.

(b) *Appeal to Director.* If no timely notice of appeal is received from the aggrieved party, the appropriate Director or designee may adopt the proposed disposition as the Final Agency Decision. If the aggrieved party appeals, the appropriate Director or designee, after review of the total complaint file, shall issue a decision to the aggrieved party. The decision of the appropriate Director shall be in writing, state the reasons underlying the decision, shall be the Final Agency Decision, shall inform the aggrieved party of the right to file a civil action as described in § 1225.21 of this part, and, if appropriate, designate the procedure to be followed for the award of attorney fees or costs.

§ 1225.10 Corrective action.

When it has been determined by Final Agency Decision that the aggrieved party has been subjected to illegal discrimination, the following corrective actions may be taken:

(a) Selection as a Trainee for aggrieved parties found to have been denied selection based on prohibited discrimination.

(b) Reappointment to Volunteer service for aggrieved parties found to have been early-terminated as a result of prohibited discrimination. To the extent possible, a Volunteer will be placed in the same position previously held. However, reassignment to the specific country of prior service, or to the specific position previously held, is contingent on several programmatic considerations such as the continued availability of the position, or program in that country, and acceptance by the host country of such placement. If the same position is deemed to be no longer available, the aggrieved party will be offered a reassignment to a position in as similar circumstances to the position previously held, or to resign from service for reasons beyond his or her control. Such a reassignment may require both additional training and an additional two year commitment to volunteer service.

(c) Provision for reasonable attorney fees and other costs incurred by the aggrieved party.

(d) Such other relief as may be deemed appropriate by the Director of Peace Corps or ACTION.

§ 1225.11 Amount of attorney fees.

(a) When a decision of the agency provides for an award of attorney's fees or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees as appropriate, to the agency within 20 days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative and the appropriate Director. Such agreement shall immediately be reduced to writing. If the complainant, the representative and the agency cannot reach an agreement on the amount of attorney's fees or costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the appropriate Director shall issue a decision determining the amount of attorney fees or costs within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(b) The amount of attorney's fees shall be made in accordance with the following standards: The time and labor required, the novelty and difficulty of the questions, the skills requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitation imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases.

Subpart C—Processing Class Complaints of Discrimination

§ 1225.12 Precomplaint procedure.

An applicant, trainee or Volunteer who believes that he or she is among a group of present or former Peace Corps or ACTION Volunteers, trainees, or applicants for volunteer service who have been illegally discriminated against and who wants to be an agent for the class shall follow those precomplaint procedures outlined in § 1225.8 of this part.

§ 1225.13 Acceptance, rejection or cancellation of complaint.

(a) Upon receipt of a class complaint, the Counselor's report, and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the EO Director shall review the file to determine whether to accept or reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation which is identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency;

(3) It is not within the purview of this subpart;

(4) The agent failed to consult a Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent;

(7) It does not meet the following prerequisites.

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are representative of the claims of the class;

(iv) The agent of the class, or his or her representative will fairly and adequately protect the interest of the class.

(b) If an allegation is not included in the Counselor's report, the EO Director shall afford the agent 15 calendar days to explain whether the matter was discussed and if not, why he or she did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the EO Director may decide to reject the allegation. If the explanation is satisfactory, the EO Director may require further counseling of the agent.

(c) If an allegation lacks specificity and detail, or if it was not submitted in writing or not signed by the agent, the EO Director shall afford the agent 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint. The EO Director may decide that the agency reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the EO Director must advise the agent how to proceed on an individual or class basis concerning these allegations.

(d) The EO Director may extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his or her representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or that he or she was prevented by circumstances beyond his or her control from acting within the time limit.

(e) When appropriate, the EO Director may determine that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(f) The EO Director may cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after:

(1) The EO Director has provided the agent a written request, including notice of proposed cancellation, that he or she provide certain information or otherwise proceed with the complaint; and

(2) Within 30 days of his or her receipt of the request.

(g) An agent must be informed by the EO Director in a request under paragraph (b) or (c) of this section that his or her complaint may be rejected if the information is not provided.

§ 1225.14 Consolidation of complaints.

The EO Director may consolidate the complaint if it involves the same or sufficiently similar allegations as those contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency.

§ 1225.15 Notification and opting out.

(a) Upon acceptance of a class complaint, the agency, within 30 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain:

(1) The name of the agency or organizational segment thereof, its location and the date of acceptance of the complaint;

(2) A description of the issues accepted as part of the class complaint;

(3) An explanation that class members may remove themselves from the class by notifying the agency within 30 calendar days after issuance of the notice; and

(4) An explanation of the binding nature of the final decision or resolution of the complaint.

§ 1225.16 Investigation and adjustment of complaint.

The complaint shall be processed promptly after it has been accepted. Once a class complaint has been accepted, the procedure outlined in § 1225.9 of this part shall apply.

§ 1225.17 Agency decision.

(a) If an adjustment of the complaint cannot be made the procedures outlined in § 1225.9 shall be followed by the EO Director except that any notice required to be sent to the aggrieved party shall be sent to the agent of the class or his or her representative.

(b) The Final Agency Decision on a class complaint shall be binding on all members of the class.

§ 1225.18 Notification of class members of decision.

Class members shall be notified by the agency of the final agency decision and corrective action, if any, using at the minimum, the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief and of the procedures to be followed. Notice shall be given by the agency within ten (10) calendar days of the transmittal of its decision to the agent.

§ 1225.19 Corrective action.

(a) When discrimination is found, Peace Corps or ACTION must take appropriate action to eliminate or modify the policy or practice out of which such discrimination arose, and provide individual corrective action to the agent and other class members in accordance with § 1225.10 of this part.

(b) When discrimination is found and a class member believes that but for that discrimination he or she would have been accepted as a Volunteer or received some other volunteer service benefit, the class member may file a written claim with the EO Director within thirty (30) calendar days of notification by the agency of its decision.

(c) The claim must include a specific, detailed statement showing that the claimant is a class member who was affected by an action or matter resulting from the discriminatory policy or practice which arose not more than 30 days preceding the filing of the class complaint.

(d) The agency shall attempt to resolve the claim within sixty (60) calendar days after the date the claim was postmarked, or, in the absence of a postmark, within sixty (60) calendar days after the date it was received by the EO Director.

§ 1225.20 Claim appeals.

(a) If the EO Director and claimant do not agree that the claimant is a member of the class, or upon the relief to which the claimant is entitled, the EO Director shall refer the claim, with recommendations concerning it to the appropriate Director for Final Agency Decision and shall so notify the claimant. The class member may submit written evidence to the appropriate Director concerning his or her status as a member of the class. Such evidence must be submitted no later than ten (10) calendar days after receipt of referral.

(b) The appropriate Director shall decide the issue within thirty (30) days of the date of referral by the EO Director. The claimant shall be informed in writing of the decision and its basis and that it will be the Final Agency Decision on the issue.

§ 1225.21 Statutory rights.

(a) A Volunteer, trainee, or applicant is authorized to file a civil action in an appropriate U.S. District Court:

(1) Within thirty (30) calendar days of his or her receipt of notice of final action taken by the agency.

(2) After one hundred eighty (180) calendar days from the date of filing a complaint with the agency if there has been no final agency action.

(b) For those complaints alleging discrimination that occur outside the United States, the U.S. District Court for the District of Columbia shall be deemed the appropriate forum.

PART 1226—PROHIBITIONS ON ELECTORAL AND LOBBYING ACTIVITIES

Subpart A—General Provisions

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1226.12 Sponsor employees.
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AUTHORITY: Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412.

SOURCE: 46 FR 8522, Jan. 27, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 1226.1 Purpose.

This part implements provisions of the Domestic Volunteer Service Act, 1973, 87 Stat. 394, Pub. L. 93-113, as amended, hereinafter referred to as the Act, pertaining to the prohibited use of Federal funds or the involvement of agency programs and volunteers in electoral and lobbying activities. These regulations are designed to define and clarify the nature and scope of prohibited activities to ensure that programs under the Act and volunteer activities are conducted within the statutory bounds established by the Act. The penalties for violation of the regulations are also prescribed. The statutory source of the prohibitions upon electoral and lobbying activities is section 403 (a) and (b) of the Act. Rules applying to the Hatch Act (Title III of Chapter 73, Title 5, United States Code) to full time and certain part time volunteers, as required by section 415(b) of the Act, are also set forth herein.

§ 1226.2 Scope.

This part applies, except where otherwise noted, to all full time and part time volunteers serving in a program authorized by the Act, including VISTA, Service Learning and the Older American Volunteer Programs. It also applies to employees of sponsoring organizations, whose salaries, or other compensation, are paid, in whole or in part, with agency funds.

§ 1226.3 Definitions.

(a) The "Act" means the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93-113 (42 U.S.C. 4951 *et seq.*).

(b) "Assistance" means funds, volunteers or volunteer training, which is paid for from funds appropriated for the purpose of supporting activities under the Act, and includes locally provided funds required by law, regulation or policy as a local contribution to activities authorized by the Act.

(c) "Full time" when used in the context of volunteer service means service of not less than 35 hours per week.

(d) "Part time" when used in the context of volunteer service, means service that is less than full time.

(e) "Recipient" or "sponsor organization" means any organization that receives assistance under the Act.

(f) "Volunteer" means an individual enrolled for service in a program or project that is authorized by or which receives assistance under the Act.

(g) "Legislative body" includes the United States Congress, State and Territorial Legislatures and locally elected or appointed bodies with the authority to enact laws.

(h) "Public office" includes any Federal, State, local elective, or party office.

(i) "Party office" means an elective position in a national, state or local organization or committees or convention of such organization, which has, as a principal purpose, support or opposition to candidates for public office.

(j) "Legislation" means bills, resolutions, amendments, nominations and other matters pending or proposed in a legislative body and includes any other matter which may be the subject of action by the legislative body.

Subpart B—Sponsoring Organization

§ 1226.4 General.

Under section 403 of the Act, volunteer programs may not be conducted in a manner which supports or results in the identification of such programs with prohibited activities. This section prescribes the nature and extent of involvement in such activity by an organization which would preclude the assignment of volunteers to the organization.

§ 1226.5 Electoral, voter registration, and other activities.

Volunteers or other assistance, in any program under the Act shall not be assigned or provided to an organization if a principal purpose or activity of the organization includes any of the following activities:

(a) *Electoral Activities.* Any activity designed to influence the outcome of elections to any public office, such as:

(1) Actively campaigning for or against or supporting candidates for public office;

(2) Raising, soliciting or collecting funds for candidates for public office;

(3) Preparing, distributing or providing funds for campaign literature for candidates, including leaflets pamphlets, and material designed for the print or electronic media;

(b) *Voter Registration Activities.* Any voter registration activity, such as

(1) Providing transportation of individuals to voter registration sites;

(2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;

(3) Disseminating official voter registration material.

(c) *Transportation to the Polls.* Providing voters or prospective voters with transportation to the polls or raising, soliciting or collecting funds for such activity.

(d) Any program sponsor which, subsequent to the receipt of any federal assistance under the Act, makes as one of its principal purposes or activities any of the activities described in § 1226.5 hereof shall be subject to the suspension or termination of such assistance, as provided in 45 CFR Part 1206.

Subpart C—Volunteer Activities

§ 1226.6 General.

(a) All volunteers, full and part time, are subject to the prohibitions on expenditure of federal funds for partisan and nonpartisan electoral activities, voter registration activities and transportation of voters to the polls, and efforts to influence the passage or defeat of legislation, as contained in Section 403 of the Act.

(b) Full time volunteers, and certain part time volunteers as specified herein, are also subject to the restrictions in Subchapter III, Chapter 73 of Title 5, United States Code, commonly referred to as the Hatch Act, as provided in Section 415(b) of the Act.

§ 1226.7 Scope.

The provisions in this subpart are applicable to full time volunteers as defined in § 1226.3(c), and to such part time volunteers as may be otherwise specified herein. Full time volunteers are deemed to be acting in their capacity as volunteers:

(a) When they are actually engaged in their volunteer assignments. VISTA volunteers and other full time volunteers who are required to serve without regard to regular working hours are presumed to be actually engaged in their volunteer assignments at all times, except during periods of authorized leave; or

(b) Whenever they represent themselves, or may reasonably be perceived by others, to be performing as a volunteer.

§ 1226.8 Prohibited activities.

(a) *Electoral Activity.* Volunteers shall not engage in any activity which may, directly or indirectly, affect or influence the outcome of any election to public office. Volunteers are prohibited from engaging in activities such as:

(1) Any activity in support of, or in opposition to a candidate for election to public office in a partisan or nonpartisan election;

(2) Participating in the circulation of petitions, or the gathering of signatures on nominating petitions or similar documents for candidates for public office.

(3) Raising, soliciting, or collecting funds for a candidate for public office;

(4) Preparing, distributing or providing funds for campaign material for candidates, including leaflets, pamphlets, brochures and material designed for the print or electronic media;

(5) Organizing political meetings or forums;

(6) Canvassing voters on behalf of a candidate for public office;

(7) Raising, soliciting or collecting funds for groups that engage in any of the activities described in paragraphs (a) (1) through (6) of this section.

(b) *Voter Registration.* Volunteers shall not engage in any voter registration activity, including:

(1) Providing transportation of individuals to voter registration sites;

(2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;

(3) The dissemination of official voter registration materials; or

(4) Raising, soliciting or collecting funds to support activities described in paragraphs (b) (1) through (3) of this section.

(c) *Transportation to the Polls.* Volunteers shall not engage in any activity to provide voters or prospective voters with transportation to the polls, nor shall they collect, raise, or solicit funds to support such activity, including securing vehicles for such activity.

(d) *Efforts to Influence Legislation.* Except as provided in § 1226.9, volunteers shall not engage in any activity for the purpose of influencing the passage or defeat of legislation or any measures on the ballot at a general or special election. For example, volunteers shall not:

(1) Testify or appear before legislative bodies in regard to proposed or pending legislation;

(2) Make telephone calls, write letters, or otherwise contact legislators or legislative staff, concerning proposed or pending legislation for the purpose of influencing the passage or defeat of such legislation;

(3) Draft legislation;

(4) Prepare legislative testimony;

(5) Prepare letters to be mailed by third parties to members of legislative bodies concerning proposed or pending legislation;

(6) Prepare or distribute any form of material, including pamphlets, newspaper columns, and material designed for either the print or electronic media, which urges recipients to contact their legislator or otherwise seek passage or defeat of legislation;

(7) Raise, collect or solicit funds to support efforts to affect the passage or defeat of legislation;

(8) Engage in any of the activities set forth in paragraphs (d) (1) through (7) of this section for the purpose of influencing executive action in approving or vetoing legislation.

(9) Circulate petitions, gather signatures on petitions, or urge or organize others to do so, which seek to have measures placed on the ballot at a general or special election.

(10) Engage in any of the activities enumerated in paragraphs (d) (1) through (9) of this section in regard to the passage or defeat of any measure on the ballot in a general or special election.

§ 1226.9 Exceptions.

(a) A volunteer may draft, review, testify or make representations to a legislative body regarding a legislative measure upon request of the legislative body, a committee, or a member thereof, provided that:

(1) The request to draft, review, testify or make representations is in writing, addressed to the volunteer or the organization to which the volunteer is assigned or placed, and signed by a member or members of the legislative body.

(2) The request states the type of representation or assistance requested and the issue to be addressed.

(3) The volunteer or the program sponsor provides a copy of such request to the State Director.

(b) The volunteer may draft, review, testify, or make a written representation to a legislative body regarding an authorization or appropriation measure directly affecting the operation of the project or program to which he or she is assigned: *Provided:*

(1) The sponsor organization provides notification to the State Director on a quarterly basis of all activity occurring pursuant to this exception.

(2) The legislative measure relates to the funding of the project or program or affects the existence or basic structure of the project or program.

(c) Notwithstanding the foregoing exceptions, any activity by a volunteer pursuant to paragraph (b) (1) or (2) of this section shall be incidental to his or her regular work assignment.

§ 1226.10 Hatch Act restrictions.

(a) In addition to the prohibitions described above, full time volunteers are subject to the Hatch Act, Subchapter III, of Chapter 73, Title 5, United States Code. Full time volunteers shall not, directly or indirectly, actively participate in political management or in political campaigns. All volunteers retain the right to vote as they choose and to express their personal opinions on political issues or candidates. Examples of prohibited activities, include, but are not limited to,

(1) Candidacy for or service as a delegate or alternate to any political convention or service as an officer or employee thereof.

(2) Acting as an officer of a primary meeting or caucus, addressing, making motions, preparing or presenting resolutions, representing others, or otherwise taking part in such meetings or caucuses.

(3) Organizing or conducting a political meeting or rally on any political matter.

(4) Holding office as a precinct or ward leader or representative, or service on any committee of a political party. It is not necessary that the service of the volunteer itself be political in nature to fall within the prohibition.

(5) Organizing a political club, being an officer of such a club, being a member of any of its committees, or representing the members of a political club in meetings or conventions.

(6) Soliciting, collecting, receiving, disbursing or otherwise handling contributions made for political purposes.

(7) Selling or soliciting pledges for dinner tickets or other activities of po-

litical organizations or candidates, or for their benefit.

(8) Distributing campaign literature, badges, buttons, bumperstickers or posters.

(9) Publishing or being editorially connected with a newspaper or other publication generally known as partisan from a political standpoint.

(10) Writing for publication or publishing any letter or article, signed or unsigned, soliciting votes in favor of or in opposition to any political party, candidate or faction.

(11) Soliciting votes, helping get out the vote, acting as a checker, watcher or challenger for any party or faction, transporting voters to or from the polls, or transporting candidates on canvassing or speaking tours.

(12) Participation in or organizing a political parade.

(13) Initiating nominating petitions or acting as a canvasser or witness on such petitions.

(14) Being a candidate for nomination or election to a National, State, or local office.

(b) Hatch Act restrictions apply to full time volunteers at all times during their service, including off-duty hours, leave, holidays and vacations.

§ 1226.11 Part time volunteers.

(a) The provisions in this section are applicable to part time volunteers, as defined in § 1226.3(d). There are two categories of part time volunteers:

(1) Those enrolled for periods of service of at least twenty (20) hours per week for not less than twenty-six (26) consecutive weeks, as authorized under Title I, Part C of the Act, and

(2) All other part time volunteers, including Senior Companions, Foster Grandparents and Retired Senior Volunteers.

(b) All part time volunteers are subject to the restrictions described in § 1226.8 (a), (b), (c) and (d) and the exceptions in § 1226.9:

(1) When they are engaged in their volunteer assignments, in training activities, or other related activities supported by ACTION funds, or

(2) Whenever they represent themselves as ACTION volunteers, or may reasonably be perceived by others to be performing as volunteers.

(c) The restrictions described in § 1226.10, pertaining to the Hatch Act, are applicable to volunteers enrolled for periods of service of at least 20 hours per week for not less than 26 consecutive weeks, as authorized under Title I, Part C of the Act:

(1) At all times in any day on which they serve as volunteers, or when engaged in activities related to their volunteer assignments, such as training; or

(2) Whenever they represent themselves as volunteers or may reasonably be perceived by others to be performing as volunteers.

Subpart D—Sponsor Employee Activities

§ 1226.12 Sponsor employees.

Sponsor employees whose salaries or other compensation are paid, in whole or in part, with agency funds are subject to the restrictions described in § 1226.8 (a), (b), (c) and (d) and the exceptions in § 1226.9:

(a) Whenever they are engaged in an activity which is supported by ACTION funds; or

(b) Whenever they identify themselves as acting in their capacity as an official of a project which receives ACTION funds, or could reasonably be perceived by others as acting in such capacity.

§ 1226.13 Obligations of sponsors.

(a) It shall be the obligation of program sponsors to ensure that they:

(1) Fully understand the restrictions on volunteer activity set forth herein;

(2) Provide training to volunteers on the restrictions and ensure that all other training materials used in training volunteers are fully consistent with these restrictions;

(3) Monitor on a continuing basis the activity of volunteers for compliance with this provision;

(4) Report all violations, or questionable situations, immediately to the State Director.

(b) Failure of a sponsor to meet the requirements set forth in paragraph (a) of this section, or a violation of the rules contained herein by either the sponsor, the sponsor's employees subject to § 1226.12 or the volunteers assigned to the sponsor, at any time during the course of the grant may be deemed to be a material failure to comply with the terms and conditions of the grant as that term is used in 45 CFR 1206.1 regarding suspension and termination of assistance or a violation of the Project Memorandum of Agreement, as applicable. The sponsor shall be subject to the procedures and penalties contained in 45 CFR 1206.1.

(c) Violation by a volunteer of any of the rules and regulations set forth herein may be cause for suspension or termination as set forth in 45 CFR 1213.5-5(2) or other disciplinary action.

PART 1228—CLEARINGHOUSE REQUIREMENTS AND PROCEDURES

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1228.2 ACTION programs covered.
1228.3 Project notification and review system.
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APPENDIX—CLEARINGHOUSE REQUIREMENTS

AUTHORITY: Office of Management and Budget Circular A-95 Revised January 2, 1976.

SOURCE: 41 FR 21199, May 24, 1976, unless otherwise noted.

§ 1228.1 General.

Office of Management and Budget Circular No. A-95, *Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects*, Part I, establishes a network of State and area-wide planning and development clearinghouses which will aid in the coordination of Federal or federally assisted projects and programs with State, areawide, and local planning for orderly growth and development.

§ 1228.2 ACTION programs covered.

The requirements of Circular A-95 apply to the following ACTION programs listed in the *Catalog of Federal Domestic Assistance:*

72.001	Foster Grandparents Program.
72.002	Retired Senior Volunteer Program.
72.008	Senior Companion Program.

§ 1228.3 Project notification and review system.

Part I of Circular A-95 requires applicants for assistance under any of the above ACTION programs to comply with the provisions of the Project Notification and Review System in order to facilitate coordinated planning on an inter-governmental basis. The essential parts of the Project Notification and Review System are:

(a) *Notification of intent.* Any agency of State or local government or any organization undertaking to apply for assistance to a project or major substantive modification thereto under any of the above ACTION programs is required to notify both the State and areawide planning and development clearinghouses in the jurisdiction of which the project is to be located of its intent to apply for assistance at such time as it determines it will develop an application. Notification will include a summary description of the project for which assistance is sought. The summary description will contain the following information, as appropriate and to the extent available:

(1) Identity of the applicant agency or organization;

(2) The geographic location of the project to be assisted. (A map should be provided, if appropriate);

(3) A brief description of the proposed project to be assisted (A map should be to scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that might be affected by the proposed project);

(4) The ACTION program title and number under which assistance is sought; and

(5) The estimated date the applicant expects to formally file an application.

(b) *Applicant responsibility.* Potential applicants are responsible for contacting the clearinghouses in their project location as early as possible to obtain forms and instructions for insuring expeditious clearinghouse review.

(c) *Federally recognized Indian tribes.* Applications from federally recognized Indian tribes are not subject to the requirements of Part I of Circular A-95. However, Indian tribes may voluntarily participate in the Project Notification and Review System and are encouraged to do so. ACTION will notify the appropriate State and areawide clearinghouses of any application from federally recognized Indian tribes upon their receipt.

§ 1228.4 Clearinghouse functions.

Clearinghouse functions include, but are not limited to:

(a) Evaluating the significance of proposed Federal or federally assisted projects to State, areawide, or local plans and programs;

(b) Receiving and disseminating project notifications (the State clearinghouse notifies State agencies; the areawide clearinghouse notifies local agencies) and providing liaison between such agencies and the applicant; and

(c) Providing public agencies charged with enforcing or furthering the objectives of State and local civil rights laws with opportunity to review and comment on the civil rights aspects of the project for which assistance is sought.

§ 1228.5 Consultation and review.

(a) State and areawide clearinghouses may have 30 days after receipt of a project notification in which to inform State and local or regional governments or agencies that may be affected by the proposed project and arrange, as may be necessary, to consult with the applicant thereon. The review may be completed in this period and comments may be submitted to the applicant.

(b) If the review is not completed during this period, the clearinghouse may work with the applicant in the resolution of any problems raised by the proposed projects during the period in which the application is being completed.

(c) In cases where no project notification has been submitted and the clearinghouse receives only a completed application, it may have 60 days to review the completed application. If a completed application is submitted during the first 30 days after a notification has been submitted, the clearinghouse may have 30 days plus the number of days remaining in the initial 30 days to review a completed application. Where clearinghouses have not completed their review during the 30 day notification period, they are strongly urged to give the applicant formal notice to that effect. Where reviews have been completed prior to completion of an application, an information copy will be supplied to the clearinghouse, upon request, when the application is submitted to the funding agency. Analysis of the timing requirement for clearinghouse review discloses that such review consists of two stages:

(1) *Stage 1—When only a notification of intent is submitted to the clearinghouse.* (i) Clearinghouse has 30 days to review. Clearinghouse *may* complete review and send comments to applicant.

Upon completion of application, applicant will submit an information copy to the clearinghouse, upon request, when submitting the application to ACTION for funding.

(ii) Clearinghouse *does not* complete review; notifies applicant; resolves problems, if any, with applicant; applicant completes application.

(iii) When a completed application is submitted during the first 30 days after a Notification of Intent has been submitted, clearinghouse has 30 days plus the number of days remaining in the initial 30 day notification period to complete review.

(2) *Stage 2—When only a completed application is submitted to clearinghouse.* Clearinghouse has 60 days to review.

(d) Written comments submitted to the areawide clearinghouses by other jurisdictions, agencies, or parties will be included as attachments to the comments of areawide clearinghouses, when they are at variance with the clearinghouse comments; and others from whom comments were solicited and received should be listed.

§ 1228.6 Clearinghouse comments and recommendations.

(a) Applicants will include with the completed application submitted to ACTION:

(1) All comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application; or

(2) Where no comments have been received from a clearinghouse, a statement that the procedures outlined in §§ 1228.3 and 1228.5 have been followed and that no comments or recommendations have been received.

(b) The objectives of clearinghouse comments and recommendations are:

(1) To assure maximum consistency of the proposed project with State, areawide, and local comprehensive plans; and

(2) To assist ACTION in determining whether the project is in accord with Federal law, particularly those requiring consistency with State, areawide, or local plans. Comments or recommendations may include, but need not be limited to, information about the extent to which the proposed project:

(i) Duplicates, runs counter to, or needs to be coordinated with other projects or activities being carried out in or affecting the area; or

(ii) Might be revised to increase its effectiveness or efficiency in relationship to other State, area, or local programs and projects.

(c) Applications for continuation or renewal grants or applications not submitted to or acted upon by ACTION within one year after completion of clearinghouse review will be subject to re-review upon request of the clearinghouse.

§ 1228.7 Agency procedures for implementation of OMB Circular A-95.

Part I of Circular A-95 requires ACTION to:

(a) Inform potential applicants for assistance under the programs indicated in § 1228.2 of this part, of the requirements of Part I:

(1) In program information materials,

(2) In response to inquiries respecting application procedures,

(3) In preapplication conferences, or

(4) By other means which will assure earliest contact between applicant and clearinghouse;

(b) Assure that all applications for assistance under programs covered by Circular A-95 have been submitted to appropriate clearinghouses for review prior to their submission to ACTION for funding;

(c) Return applications to the applicant which do not carry evidence that both areawide and State clearinghouses have been given an opportunity to review the application, with instructions to fulfill the requirements of Part I;

(d) Insure that all applications contain a *State Application identified* (SAI) number (This is mandatory for use in notifying clearinghouses of action taken on the application);

(e) Notify such clearinghouses within seven working days of any major action taken on such applications that have been reviewed by said clearinghouses; major actions will include awards, rejections, returns for amendment, deferrals, or withdrawals;

(f) Use Standard Form 424 for the Report of Federal Action to clearinghouses;

(g) Where a clearinghouse has recommended against approval of an application or approval only with specific and major substantive changes, and ACTION approves the application substantially as submitted, ACTION will provide the clearinghouse, along with the action notice, an explanation therefor; and

(h) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, ACTION will consult with the agency assisting the referenced projects prior to acting, if it plans to approve the application.

§ 1228.8 Roles and responsibilities.

(a) *State Program Director.* The State Program Director shall: (1) Inform potential applicants for assistance under such programs of the requirements of Part I:

(i) In program informational materials (See below, *Clearinghouse Requirements*. ACTION Form A-780),

(ii) In response to inquiries respecting application procedures,

(iii) In preapplication conferences, or

(iv) By other means which will assure earliest contact between applicant and clearinghouses.

(2) Assure that all applications for assistance under programs covered by Part I have been submitted to appropriate clearinghouses for review prior to their submission to ACTION. In cases where applications are received by the State Program Office and the applicant has not submitted a Notification of Intent or an application to the State and areawide clearinghouses, the applicant should be notified to submit the application to the clearinghouses for review and that ACTION will not be able to take any funding action until the review has been completed. When the applicant receives the clearinghouse reviews, it will be necessary to complete a new application face page and forward it and any comments received to ACTION.

(3) Evaluate the comments furnished by the clearinghouses and forward his recommendation to the Project Review Board for final determination by the Regional Director.

(4) Furnish a copy of the face page of rejected, deferred, or withdrawn applications to the Grants Officer in time for him to comply with the requirement of notifying the clearinghouses within seven working days.

(b) *Regional Director.* (1) Where a clearinghouse has recommended against approval of an application or approval only with specific and major substantive changes, and ACTION approves the application substantially submitted, the Regional Director will provide the clearinghouse an explanation thereof.

(2) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the Regional Director will consult with the agency assisting the referenced projects prior to funding the application.

(c) *Grants Officer.* The Grants Officer shall serve as the coordinating official for A-95 in the Regional Office and as such shall be responsible for notifying the clearinghouses within seven working days of any major action taken on applications which have been reviewed by the clearinghouses. Major actions will include awards, rejections, deferrals, or withdrawals. The face page of the application of SF 424 will be utilized for this purpose.

APPENDIX—CLEARINGHOUSE REQUIREMENTS

Office of Management and Budget Circular No. A-95, *Evaluation, Review, and Coordination of Federal and federally Assisted Programs and Projects*, Part I, establishes clearinghouse procedures to be followed by applicants seeking Federal assistance under the following programs: Foster Grandparent Program, 72.001; Retired Senior Volunteer Program, 72.002; and Senior Companion Program, 72.008.

In applying for assistance from ACTION for one of the programs listed above, you are requested to submit a *Notification of Intent* to the State and areawide clearinghouses no later than 175 days prior to the start date shown on the application.

Applicants are urged to contact the clearinghouses at the earliest possible time to obtain forms and instructions for insuring expeditious clearinghouse review.

Your Notification of Intent must contain at a minimum a summary description of the project for which you are seeking assistance and will include:

1. Identity of the applicant agency, organization, or individual.

2. The geographic location of the project to be assisted.

3. A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local governments having plans, programs, or projects that might be affected by the proposed project.

4. The ACTION program title and number under which assistance will be sought. (See program title and number above).

5. The estimated date by which you expect to formally file an application.

It is recommended that the enclosed SF-424 be utilized for your Notification of Intent, with the concurrence of the clearinghouses.

Clearinghouses have 30 days from receipt of your notice to inform appropriate agencies of your proposed project. The review may be completed in this period and comments submitted to you.

In cases where the clearinghouses have not completed their review within 30 days, you should forward your application for assistance to the clearinghouses no later than 145 days prior to the start date on the application.

Since ACTION cannot take any action on your application until the requirements of the Circular have been met, it is most important that you submit your notification to the clearinghouses at the earliest feasible time in order to assure maximum time for effective coordination and to avoid the delay of the submission of your application to ACTION.

You must include with your application any comments made by or through the clearinghouses and complete Item 22(b) on the face page of the application.

PART 1229—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, Pub. L. 93-113; 42 U.S.C. 4951, *et seq;* 42 U.S.C. 5060.

Source: 53 FR 19202 and 19204, May 26, 1988, unless otherwise noted.

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Subpart A—General

§ 1229.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 1229.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 1229.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or,* a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ 1229.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 1229.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 1229.110(a). Sections 1229.325, "Scope of debarment," and 1229.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 1229.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with

Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 1229.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 1229.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 1229.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 1229.205 Ineligible persons.

Persons who are ineligible, as defined in § 1229.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 1229.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 1229.315 are excluded in accordance with the terms of their settlements. ACTION shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 1229.215 Exception provision.

ACTION may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 1229.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 1229.505(a).

§ 1229.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 1229.215.

§ 1229.225 Failure to adhere to restrictions.

Except as permitted under § 1229.215 or § 1229.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 1229.300 General.

The debarring official may debar a person for any of the causes in § 1229.305, using procedures established in §§ 1229.310 through 1229.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 1229.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 1229.300 through 1229.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 1229.215 or § 1229.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1229.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ 1229.310 Procedures.

ACTION shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 1229.311 through 1229.314.

§ 1229.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 1229.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 1229.305 for proposing debarment;

(d) Of the provisions of § 1229.311 through § 1229.314, and any other ACTION procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 1229.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1229.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 1229.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 1229.135 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, ACTION may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ 1229.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the causes(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 1229.311 through 1229.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 1229.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 1229.311 through 1229.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 1229.400 General.

(a) The suspending official may suspend a person for any of the causes in § 1229.405 using procedures established in §§ 1229.410 through 1229.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 1229.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 1229.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 1229.400 through 1229.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 1229.305(a); or

(2) That a cause for debarment under § 1229.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 1229.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* ACTION shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 1229.411 through § 1229.413.

§ 1229.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 1229.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 1229.411 through § 1229.413 and any other ACTION procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 1229.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1229.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 1229.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 1229.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 1229.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 1229.325), except that the procedures of §§ 1229.410 through 1229.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 1229.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 1229.505 ACTION responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which ACTION has granted exceptions under § 1229.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 1229.500(b) and of the exceptions granted under § 1229.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 1229.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to ACTION if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records,
making false statements, or receiving
property;

(c) Are not presently indicted for or
wise criminally or civilly charged by
ernmental entity (Federal, State or
with commission of any of the offense
merated in paragraph (1)(b) of this c
cation; and

(d) Have not within a three-year
preceding this application/proposal ha
or more public transactions (Federal,
or local) terminated for cause or defau

(2) Where the prospective primary p
pant is unable to certify to any of the
ments in this certification, such prosp
participant shall attach an explanati
this proposal.

APPENDIX B—CERTIFICATION RE
ING DEBARMENT, SUSPENSION, I
GIBILTY AND VOLUNTARY E
SION—LOWER TIER COVERED T
ACTIONS

Instructions for Certification

1. By signing and submitting this pr
al, the prospective lower tier particip
providing the certification set out belo

2. The certification in this clause is
terial representation of fact upon whi
liance was placed when this transactio
entered into. If it is later determined
the prospective lower tier participant
ingly rendered an erroneous certificati
addition to other remedies available
Federal Government, the departme
agency with which this transaction ori
ed may pursue available remedies, incl
suspension and/or debarment.

3. The prospective lower tier partic
shall provide immediate written noti
the person to which this proposal is su
ted if at any time the prospective lowe
participant learns that its certificatio
erroneous when submitted or has be
erroneous by reason of changed ci
stances.

4. The terms "covered transaction,"
barred," "suspended," "ineligible,"
tier covered transaction," "partici
"person," "primary covered transac
"principal," "proposal," and "voluntari
cluded," as used in this clause, hav
meanings set out in the Definition
Coverage sections of rules implementi
ecutive Order 12549. You may conta
person to which this proposal is subn
for assistance in obtaining a copy of
regulations.

5. The prospective lower tier partic
agrees by submitting this proposal
should the proposed covered transacti
entered into, it shall not knowingly
into any lower tier covered transactio

a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PART 1232—NON-DISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM ACTION

Subpart A—General Provisions

Sec.

1232.1 Purpose.
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1232.12 Preemployment or pre-selection inquires.

Subpart C—Program Accessibility

1232.13 General requirement concerning program accessibility.
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Subpart D—Procedures

1232.16 Procedures.

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95-602.

SOURCE: 44 FR 31018, May 30, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 1232.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1232.2 Application.

This part applies to each recipient of Federal financial assistance from ACTION and to each program or activity that receives or benefits from such assistance, including volunteer programs such as VISTA, University Year for ACTION (UYA), Senior Companion Program (SCP), Foster Grandparent Program (FGP) and Retired Senior Volunteer Program (RSVP). This part does not apply to recipients outside the United States which receive financial assistance under the Peace Corps Act, 22 U.S.C. 2501, Pub. L. 87-293, as amended.

§ 1232.3 Definitions.

As used in this part the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, and the Rehabilitation Act Amendments of 1978, Pub. L. 95-602.

(b) "Section 504" means section 504 of the Act.

(c) "Director" means the Director of ACTION.

(d) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by an ACTION official or by a recipient as a condition to becoming a recipient.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement which provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such pro
erty for less than fair market value
for reduced consideration; and

(ii) Proceeds from a subsequen
transfer or lease of such property
the Federal share of its fair mark
value is not returned to the Feder
Government.

(4) A Federal agreement, arrang
ment or other contract which has
one of its purposes the provision of a
sistance, including the provision
volunteers under the Domestic Volu
teer Service Act of 1973, 42 U.S.
4951, Pub. L. 93-113, as amended.

(g) "Facility" means all or any po
tion of buildings, structures, equi
ment, roads, walks, parking lots,
other real or personal property or i
terest in such property.

(h) Handicapped person.

(1) "Handicapped person" mea
any person who has a physical
mental impairment that substantiall
limits one or more major life activitie
has a record of such an impairment,
is regarded as having such an impai
ment, except that as it relates to em
ployment or volunteer service th
term "handicapped person" does n
include any individual who is an alc
holic or drug abuser whose current us
of alcohol or drugs prevents such ind
vidual from performing the duties
the job in question or whose emplo
ment or volunteer service, by reason
such current alcohol or drug abus
would constitute a direct threat
property or the safety of others.

(2) As used in paragraph (h)(1)
this section, the phrase:

(i) "Physical or mental impairmen
means (A) any physiological disorde
or condition, cosmetic disfiguremen
or anatomical loss affecting one
more of the following body system
Neurological; musculoskeletal; speci
sense organs; respiratory, includin
speech organs; cardiovascular; repr
ductive; digestive; genitourinar
hemic and lymphatic; skin; and end
crine; or (B) any mental or psycholog
cal disorder, such as mental retard
tion, organic brain syndrome, emotio
al or mental illness, and specific lear
ing disabilities. The term "physical
mental impairment" includes, but
not limited to, such diseases and cond
tions as orthopedic, visual, speech, an

hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (h)(2)(i) of this section but is treated by a recipient as having such an impairment.

(i) "Qualified handicapped person" means (1) with respect to employment or volunteer service, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job or assignment in question; and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

(k) "Volunteer" and "Volunteer service" refers to any person serving as a full time or part-time volunteer under any programs authorized under the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, as amended.

(l) "Work station" means any public or private agency, institution, organization or other entity to which volunteers are assigned by a recipient.

(Sec. 504, Rehabilitation Act of 1973 Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794), sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955; Sec. 402(14), Pub. L. 93-113, 87 Stat. 398)

[44 FR 31018, May 30, 1979; 46 FR 6951, Jan. 22, 1981]

§ 1232.4 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity to which this part applies.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, volunteers and beneficiaries are available to persons with impaired vision and hearing.

(f) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Federal financial assistance from ACTION because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

§ 1232.5 Assurances required.

(a) An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to ACTION. The assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(b) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(c) A recipient operating a volunteer program under which volunteers are assigned to a number of work stations shall obtain an assurance from each work station that neither volunteers nor the beneficiaries they serve will be discriminated against on the basis of handicap.

§ 1232.6 Notice.

Recipients shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, volunteers and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of Section 504 and this part.

§ 1232.7 Remedial action, voluntary action and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of Section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of Section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of Section 504 or this part, require a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or

(ii) With respect to handicapped persons who would have been participants in the program had the discrimination not occurred, or

(iii) With respect to handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* Recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) Each recipient shall, within one year of the effective date of this part, conduct a self-evaluation of its compliance with Section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Each recipient shall with the assistance of and consultation with interested persons, including handicapped persons, evaluate its current policies, practices and effects thereof; modify any that do not meet the requirements of this part; and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

§ 1232.8 Effect of state or local law.

The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

Subpart B—Employment and Volunteer Service Practices

§ 1232.9 General prohibitions against employment and volunteer service discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment or volunteer service under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment or volunteer service under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees or volunteers in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment and volunteer service applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment or volunteer service;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment or volunteer service, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment or volunteer service.

(d) A recipient may not participate in a contractural or other relationship that has the effect of subjecting qualified handicapped applicants, volunteers or employees, to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(f) Recipients operating a volunteer program under which volunteers are assigned to work in a number of work stations will assure that a representative sample of work stations are accessible to handicapped persons.

§ 1232.10 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant, employee or volunteer unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees or volunteers readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees or volunteers, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce or volunteer force, and

(3) The nature and cost of the accommodation needed.

§ 1232.11 Employment and volunteer selection criteria.

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 1232.12 Preemployment or pre-selection inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions. For the purpose of this paragraph, "pre-employment" as applied to applicants for volunteer positions means prior to selection as a volunteer.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1232.8(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 1232.8(b) or when a recipient is taking affirmative action pursuant to Section 503 of the Act, the recipient may invite applicants for employment or volunteer service to indicate whether and to what extent they are handicapped: *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment or volunteer service on the results of a medical examination conducted prior to the volunteer or employee's entrance on duty. *Provided*, That:

(1) All entering volunteers or employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officers investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 1232.13 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

§ 1232.14 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

(c) In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan which sets forth in detail the steps necessary to complete the changes, and a schedule for taking those steps. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the plan shall be made available for public inspection.

§ 1232.15 New construction.

(a) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. construction shall be considered new if ground breaking takes place after the effective date of the regulation. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) Design, construction or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971), which is incorporated by reference in this part, shall constitute compliance with this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

Subpart D—Procedures

§ 1232.16 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 1203.6 through 1203.11 of this title.

PART 1233—INTERGOVERNMENTAL REVIEW OF ACTION PROGRAMS

Sec.
1233.1 What is the purpose of these regulations?
1233.2 What definitions apply to these regulations?
1233.3 What programs of the Agency are subject to these regulations?
1233.4 [Reserved]
1233.5 What is the Director's obligation with respect to federal interagency coordination?
1233.6 What procedures apply to the selection of programs under these regulations?
1233.7 How does the Director communicate with state and local officials concerning the Agency's programs?
1233.8 How does the Director provide states an opportunity to comment on proposed federal financial assistance?
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1233.10 How does the Director make efforts to accommodate intergovernmental concerns?
1233.11—1233.12 [Reserved]
1233.13 May the Director waive any provision of these regulations?

Authority: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6505).

Source: 48 FR 29284, June 24, 1983, unless otherwise noted.

Editorial Note: For additional information, see related documents published at 47 FR 57369, December 23, 1982, 48 FR 17101, April 21, 1983, and 48 FR 29096, June 24, 1983.

§ 1233.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the Agency or its officers.

§ 1233.2 What definitions apply to these regulations?

"Agency" means ACTION, the National Volunteer Agency.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Director" means the Director of ACTION, or an official or employee of the Agency acting for the Director under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1233.3 What programs of the Agency are subject to these regulations?

The Director publishes in the Federal Register a list of the Agency's programs that are subject to these regulations.

§ 1233.4 [Reserved]

§ 1233.5 What is the Director's obligation with respect to federal interagency coordination?

The Director, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and ACTION regarding programs covered under these regulations.

§ 1233.6 What procedures apply to the selection of programs under these regulations?

(a) A state may select any ACTION program published in the Federal Register in accordance with § 1233.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Director of the Agency's programs selected for that process.

(c) A state may notify the Director of changes in its selections at any time. For each change, the state shall submit to the Director an assurance that the state has consulted with local elected officials regarding the change. The Agency may establish deadlines by which states are required to inform the Director of changes in their program selections.

(d) The Director uses a state's process as soon as feasible, depending on individual programs, after the Director is notified of its selections.

§ 1233.7 How does the Director communicate with state and local officials concerning the Agency's programs?

(a) The Director provides opportunities for consultation by elected officials of those state and local governments that would provide the nonfederal funds for, or that would be directly affected by, proposed federal financial assistance from the Agency. For those programs covered by a state process under § 1233.6, the Director, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Director provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance if:

(1) The state has not adopted a process under the Order; or

(2) The assistance involves a program not selected for the state process.

This notice may be made by publication in the Federal Register, or other appropriate means, which the Agency in its discretion deems appropriate.

§ 1233.8 How does the Director provide states an opportunity to comment on proposed federal financial assistance?

(a) Except in unusual circumstances, the Director gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Director to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Director to comment

on proposed federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency have been delegated.

§ 1233.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 1233.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 1233.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both.

(d) If a program is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both. In addition, if a state process recommendation for a nonselected program is transmitted to the Agency by the single point of contact, the Director follows the prodecures of § 1233.10 of this part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 1233.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

§ 1233.10 How does the Director make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Agency through its single point of contact, the Director either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the Agency's decision, in such form as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

(1) The Agency will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purpose of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§§ 1233.11—1233.12 [Reserved]

§ 1233.13 May the Director waive any provision of these regulations?

In an emergency, the Director may waive any provision of these regulations.

PART 1234—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

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Subpart E—Entitlements [Reserved]

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Subpart A—General

§ 1234.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 1234.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 1234.3 Definitions.

As used in this part:

"*Accrued expenditures*" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"*Accrued income*" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost*" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) Fo nonconstruction grants, the SF-26 "Financial Status Report" (or othe equivalent report); (2) for constructio grants, the SF-271 "Outlay Repor and Request for Reimbursement" (o other equivalent report).

"*Federally recognized Indian tribe government*" means the governin body or a governmental agency of an Indian tribe, band, nation, or other or ganized group or community (includ ing any Native village as defined i section 3 of the Alaska Native Claim Settlement Act, 85 Stat 688) certifie by the Secretary of the Interior as eli gible for the special programs an services provided by him through th Bureau of Indian Affairs.

"*Government*" means a State o local government or a federally recog nized Indian tribal government.

"*Grant*" means an award of finan cial assistance, including cooperativ agreements, in the form of money, o property in lieu of money, by the Fed eral Government to an eligible grant ee. The term does not include techni cal assistance which provides service instead of money, or other assistanc in the form of revenue sharing, loans loan guarantees, interest subsidies, in surance, or direct appropriations. Also the term does not include assistance such as a fellowship or other lum sum award, which the grantee is no required to account for.

"*Grantee*" means the government t which a grant is awarded and which i accountable for the use of the fund provided. The grantee is the entir legal entity even if only a particula component of the entity is designate in the grant award document.

"*Local government*" means a county municipality, city, town, townshi local public authority (including an public and Indian housing agenc under the United States Housing Ac of 1937) school district, special distric intrastate district, council of govern ments (whether or not incorporated a a nonprofit corporation under stat law), any other regional or interstat government entity, or any agency o instrumentality of a local governmen

"*Obligations*" means the amounts o orders placed, contracts and subgrant awarded, goods and services receive and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the United States Office of Management and Budget.

"*Outlays*" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method*" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval*" means documentation evidencing consent prior to incurring specific cost.

"*Real property*" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share*", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"*State*" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"*Subgrant*" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "*grant*" in this part.

"*Subgrantee*" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies*" means all tangible personal property other than "*equipment*" as defined in this part.

"*Suspension*" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination*" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "*Termination*" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant*" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions*" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 1234.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 1234.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Title
III of the Job Training Partners
Act of 1982 and under the Pu
Health Services Act (Section 1921),
cohol and Drug Abuse Treatment
Rehabilitation Block Grant and
C of Title V, Mental Health Ser
for the Homeless Block Grant).

(3) Entitlement grants to carry
the following programs of the So
Security Act:

(i) Aid to Needy Families with
pendent Children (Title IV-A of
Act, not including the Work Incen
Program (WIN) authorized by sect
402(a)19(G); HHS grants for WIN
subject to this part);

(ii) Child Support Enforcement
Establishment of Paternity (Title
D of the Act);

(iii) Foster Care and Adoption
sistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and
abled (Titles I, X, XIV, and X
AABD of the Act); and

(v) Medical Assistance (Medic
(Title XIX of the Act) not includ
the State Medicaid Fraud Control
gram authorized by sect
1903(a)(6)(B).

(4) Entitlement grants under the
lowing programs of The Natio
School Lunch Act:

(i) School Lunch (section 4 of
Act),

(ii) Commodity Assistance (sectio
of the Act),

(iii) Special Meal Assistance (sect
11 of the Act),

(iv) Summer Food Service for C
dren (section 13 of the Act), and

(v) Child Care Food Program (s
tion 17 of the Act).

(5) Entitlement grants under the
lowing programs of The Child Nu
tion Act of 1966:

(i) Special Milk (section 3 of
Act), and

(ii) School Breakfast (section 4
the Act).

(6) Entitlement grants for State
ministrative expenses under The Fo
Stamp Act of 1977 (section 16 of
Act).

(7) A grant for an experiment
pilot, or demonstration project tha
also supported by a grant listed
paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 1234.4(a) (3) through (8) are subject to Subpart E.

§ 1234.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 1234.6.

§ 1234.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 1234.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 1234.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 1234.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictio
may include:

(1) Payment on a reimburseme
basis;

(2) Withholding authority to pr
ceed to the next phase until receipt
evidence of acceptable performan
within a given funding period;

(3) Requiring additional, more d
tailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgra
tee to obtain technical or manageme
assistance; or

(6) Establishing additional prior a
provals.

(c) If an awarding agency decides
impose such conditions, the awardi
official will notify the grantee or su
grantee as early as possible, in writi
of:

(1) The nature of the special con
tions/restrictions;

(2) The reason(s) for imposing the

(3) The corrective actions whi
must be taken before they will be
moved and the time allowed for co
pleting the corrective actions and

(4) The method of requesting rec
sideration of the conditions/restr
tions imposed.

Subpart C—Post-Award Requireme

FINANCIAL ADMINISTRATION

§ 1234.20 Standards for financial mana
ment systems.

(a) A State must expand and
count for grant funds in accorda
with State laws and procedures for
pending and accounting for its c
funds. Fiscal control and account
procedures of the State, as well as
subgrantees and cost-type contract
must be sufficient to—

(1) Permit preparation of reports
quired by this part and the statu
authorizing the grant, and

(2) Permit the tracing of funds t
level of expenditures adequate to
tablish that such funds have not b
used in violation of the restricti
and prohibitions of applicable s
utes.

(b) The financial management
tems of other grantees and subg

tees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 1234.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance wi § 1234.43(c).

(3) A Federal agency shall not ma payment to grantees for amounts th are withheld by grantees or subgra tees from payment to contractors assure satisfactory completion work. Payments shall be made by t Federal agency when the grantees subgrantees actually disburse t withheld funds to the contractors to escrow accounts established assure satisfactory completion work.

(h) *Cash depositories.* (1) Consiste with the national goal of expandi the opportunities for minority bu ness enterprises, grantees and su grantees are encouraged to use mino ty banks (a bank which is owned least 50 percent by minority grou members). A list of minority own banks can be obtained from the M nority Business Development Agenc Department of Commerce, Washin ton, DC 20230.

(2) A grantee or subgrantee sha maintain a separate bank account onl when required by Federal-State agre ment.

(i) *Interest earned on advance* Except for interest earned on advance of funds exempt under the Intergo ernmental Cooperation Act (31 U.S.C 6501 et seq.) and the Indian Self-D termination Act (23 U.S.C. 450), gran ees and subgrantees shall promptl but at least quarterly, remit intere earned on advances to the Feder agency. The grantee or subgrant may keep interest amounts up to $10 per year for administrative expenses.

§ 1234.22 Allowable costs.

(a) *Limitation on use of fund* Grant funds may be used only for:

(1) The allowable costs of the grant ees, subgrantees and cost-type contra tors, including allowable costs in th form of payments to fixed-price con tractors; and

(2) Reasonable fees or profit to cost type contractors but not any fee o profit (or other increment above a lowable costs) to the grantee or sub grantee.

(b) *Applicable cost principles.* Fo each kind of organization, there is set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government	OMB Circular A-87
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular	OMB Circular A-122
Educational institutions	OMB Circular A-21
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency

§ 1234.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 1234.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 1234.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 1234.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant

agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by

individuals will be valued at rates co
sistent with those ordinarily paid f
similar work in the grantee's or su
grantee's organization. If the grant
or subgrantee does not have emplo
ees performing similar work, the ra
will be consistent with those ordinar
paid by other employers for simi
work in the same labor market.
either case, a reasonable amount
fringe benefits may be included in t
valuation.

(2) *Employees of other organi*
tions. When an employer other tha
grantee, subgrantee, or cost-type c
tractor furnishes free of charge
services of an employee in the empl
ee's normal line of work, the servi
will be valued at the employee's re
lar rate of pay exclusive of the
ployee's fringe benefits and overhe
costs. If the services are in a differ
line of work, paragraph (c)(1) of t
section applies.

(d) *Valuation of third party dona*
supplies and loaned equipment
space. (1) If a third party donates s
plies, the contribution will be val
at the market value of the supplie
the time of donation.

(2) If a third party donates the
of equipment or space in a build
but retains title, the contribution
be valued at the fair rental rate of
equipment or space.

(e) *Valuation of third party don*
equipment, buildings, and land.
third party donates equipment, bu
ings, or land, and title passes t
grantee or subgrantee, the treatm
of the donated property will dep
upon the purpose of the grant or
grant, as follows:

(1) *Awards for capital expendit*
If the purpose of the grant or
grant is to assist the grantee or
grantee in the acquisition of prope
the market value of that propert
the time of donation may be cou
as cost sharing or matching.

(2) *Other awards.* If assisting in
acquisition of property is not the
pose of the grant or subgrant, p
graphs (e)(2) (i) and (ii) of this sec
apply:

(i) If approval is obtained from
awarding agency, the market valu
the time of donation of the don
equipment or buildings and the

rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1234.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 1234.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 1234.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 1234.31 and 1234.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 1234.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 1234.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 1234.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 1234.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 1234.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1234.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's ap-

proved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 1234.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highe possible return.

(3) *Transfer of title.* Transfer title the awarding agency or to a thir party designated/approved by tl awarding agency. The grantee or su grantee shall be paid an amount calc lated by applying the grantee or su grantee's percentage of participatic in the purchase of the real property the current fair market value of tl property.

§ 1234.32 Equipment.

(a) *Title.* Subject to the obligatio and conditions set forth in this se tion, title to equipment acquired und a grant or subgrant will vest upon a quisition in the grantee or subgrant respectively.

(b) *States.* A State will use, manag and dispose of equipment acquire under a grant by the State in accor ance with State laws and procedure Other grantees and subgrantees w follow paragraphs (c) through (e) this section.

(c) *Use.* (1) Equipment shall be us by the grantee or subgrantee in t program or project for which it w acquired as long as needed, whether not the project or program continu to be supported by Federal fund When no longer needed for the orig nal program or project, the equipme may be used in other activities cu rently or previously supported by Federal agency.

(2) The grantee or subgrantee sha also make equipment available for u on other projects or programs curren ly or previously supported by the Fe eral Government, providing such u will not interfere with the work on th projects or program for which it w originally acquired. First preferen for other use shall be given to oth programs or projects supported by th awarding agency. User fees should b considered if appropriate.

(3) Notwithstanding the encourag ment in § 1234.25(a) to earn progra income, the grantee or subgrante must not use equipment acquired wit grant funds to provide services for fee to compete unfairly with privat companies that provide equivalen

services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 1234.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 1234.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 1234.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 1234.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 1234.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the star
identified in this section.

(2) Grantees and subgrantee
maintain a contract administ
system which ensures that contr
perform in accordance with the
conditions, and specifications of
contracts or purchase orders.

(3) Grantees and subgrantee
maintain a written code of star
of conduct governing the perforr
of their employees engaged i
award and administration of cont
No employee, officer or agent
grantee or subgrantee shall parti
in selection, or in the award or a
istration of a contract support
Federal funds if a conflict of in
real or apparent, would be inv
Such a conflict would arise when

(i) The employee, officer or ag

(ii) Any member of his imm
family,

(iii) His or her partner, or

(iv) An organization which em
or is about to employ, any o
above, has a financial or other in
in the firm selected for award
grantee's or subgrantee's officer
ployees or agents will neither
nor accept gratuities, favors or
thing of monetary value from co
tors, potential contractors, or
to subagreements. Grantee and
grantees may set minimum
where the financial interest is no
stantial or the gift is an unso
item of nominal intrinsic value.
extent permitted by State or loc
or regulations, such standards o
duct will provide for penalties,
tions, or other disciplinary actio
violations of such standards b
grantee's and subgrantee's of
employees, or agents, or by co
tors or their agents. The aw
agency may in regulation provide
tional prohibitions relative to re
parent, or potential conflicts of
est.

(4) Grantee and subgrantee
dures will provide for a review o
posed procurements to avoid pur
of unnecessary or duplicative
Consideration should be given t
solidating or breaking out pr
ments to obtain a more econ
purchase. Where appropriate, an
ysis will be made of lease versu

chase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 1234.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services

are current and inclu
fied sources to ensure
and free competition
and subgrantees will
tential bidders from
the solicitation period

(d) *Methods of proc
lowed*—(1) *Procureme
chase procedures.* Sm
cedures are those rela
informal procurement
curing services, sup
property that do not
$25,000 in the aggreg
chase procurements
rate quotations will
an adequate numb
sources.

(2) Procurement
(formal advertising).
solicited and a firm
tract (lump sum o
awarded to the re
whose bid, conform
material terms and
invitation for bids,
price. The sealed bi
preferred method f
struction, if the
§ 1234.36(d)(2)(i) app

(i) In order for sea
feasible, the follo
should be present:

(A) A complete, ad
tic specification or
tion is available;

(B) Two or more r
are willing and able
tively for the busines

(C) The procurem
a firm fixed price co
lection of the succes
made principally on

(ii) If sealed bids
lowing requirements

(A) The invitatio
publicly advertised
solicited from an ad
known suppliers, pr
cient time prior to
opening the bids;

(B) The invitatio
will include any spe
tinent attachments
items or services
bidder to properly r

(C) All bids will
at the time and pla
invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see
§ 1234.22). Grantees may referen
their own cost principles that comp
with the applicable Federal cost pri
ciples.

(4) The cost plus a percentage
cost and percentage of constructi
cost methods of contracting shall n
be used.

(g) *Awarding agency review.* (
Grantees and subgrantees must ma
available, upon request of the awa
ing agency, technical specifications
proposed procurements where t
awarding agency believes such revi
is needed to ensure that the item an
or service specified is the one bei
proposed for purchase. This revi
generally will take place prior to t
time the specification is incorporat
into a solicitation document. Howev
if the grantee or subgrantee desires
have the review accomplished afte
solication has been developed, t
awarding agency may still review t
specifications, with such review usu
ly limited to the technical aspects
the proposed purchase.

(2) Grantees and subgrantees m
on request make available for awa
ing agency pre-award review procu
ment documents, such as requests
proposals or invitations for bids, in
pendent cost estimates, etc., when:

(i) A grantee's or subgrantee's p
curement procedures or operation f
to comply with the procurem
standards in this seciton; or

(ii) The procurement is expected
exceed $25,000 and is to be awar
without competition or only one bid
offer is received in response to a so
tation; or

(iii) The procurement, which is
pected to exceed $25,000, specifie
"brand name" product; or

(iv) The proposed award over $25,
is to be awarded to other than the
parent low bidder under a sealed
procurement; or

(v) A proposed contract modificat
changes the scope of a contract or
creases the contract amount by m
than $25,000.

(3) A grantee or subgrantee will
exempt from the pre-award review
paragraph (g)(2) of this section if
awarding agency determines that
procurement systems comply with
standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 1234.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regul
tion;

(3) Ensure that a provision for con
pliance with § 1234.42 is placed i
every cost reimbursement subgran
and

(4) Conform any advances of gra
funds to subgrantees substantially
the same standards of timing an
amount that apply to cash advanc
by Federal agencies.

(b) *All other grantees.* All oth
grantees shall follow the provisions
this part which are applicable
awarding agencies when awarding an
administering subgrants (whether on
cost reimbursement or fixed amou
basis) of financial assistance to lo
and Indian tribal governments. Gran
ees shall:

(1) Ensure that every subgrant i
cludes a provision for compliance wi
this part;

(2) Ensure that every subgrant i
cludes any clauses required by Feder
statute and executive orders and the
implementing regulations; and

(3) Ensure that subgrantees a
aware of requirements imposed upo
them by Federal statutes and regul
tions.

(c) *Exceptions.* By their own term
certain provisions of this part do n
apply to the award and administrati
of subgrants:

(1) Section 1234.10;

(2) Section 1234.11;

(3) The letter-of-credit procedur
specified in Treasury Regulations
31 CFR Part 205, cited in § 1234.2
and

(4) Section 1234.50.

Reports, Records, Retention, and Enforcement

§ 1234.40 Monitoring and reporting pr
gram performance.

(a) *Monitoring by grantees.* Grante
are responsible for managing the da
to-day operations of grant and su
grant supported activities. Grante
must monitor grant and subgrant su
ported activities to assure complian
with applicable Federal requiremen
and that performance goals are bei
achieved. Grantee monitoring mu
cover each program, function or acti
ty.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 1234.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. How-

ever, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 1234.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the
report for each project or prog
However, the report will not be
quired more frequently than qua
ly. If the Federal agency does
specify the frequency of the repo
will be submitted annually. A
report will be required upon ex
tion or termination of grant suppo

(4) *Due date.* When reports ar
quired on a quarterly or semian
basis, they will be due 30 days
the reporting period. When requ
on an annual basis, they will be du
days after the grant year. Fina
ports will be due 90 days after th
piration or termination of grant
port.

(c) *Federal Cash Transact*
Report—(1) *Form.* (i) For grants
by letter or credit, Treasury chec
vances or electronic transfer of fu
the grantee will submit the Stan
Form 272, Federal Cash Transac
Report, and when necessary, its
tinuation sheet, Standard Form
unless the terms of the award ex
the grantee from this requirement

(ii) These reports will be used b
Federal agency to monitor cash
vanced to grantees and to obtain
bursement or outlay informatio
each grant from grantees. The fo
of the report may be adapted as
propriate when reporting is to be
complished with the assistance
automatic data processing equip
provided that the information t
submitted is not changed in subst

(2) *Forecasts of Federal cash req*
ments. Forecasts of Federal cash
quirements may be required in
"Remarks" section of the report.

(3) *Cash in hands of subgran*
When considered necessary and f
ble by the Federal agency, gra
may be required to report the am
of cash advances in excess of t
days' needs in the hands of their
grantees or contractors and to pro
short narrative explanations of act
taken by the grantee to reduce
excess balances.

(4) *Frequency and due date.* Gr
ees must submit the report no
than 15 working days following
end of each quarter. However, w
an advance either by letter of cred
electronic transfer of funds is aut
ized at an annualized rate of one

lion dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1234.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1234.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1234.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1234.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1234.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1234.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1234.41(b)(2).

§ 1234.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1234.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is

not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotia*
If the proposal, plan, or other co
tation is not required to be subm
to the Federal Government (or to
grantee) for negotiation purp
then the 3-year retention period
the proposal plan, or computation
its supporting records starts from
of the fiscal year (or other accoun
period) covered by the proposal, p
or other computation.

(d) *Substitution of microfilm.* Co
made by microfilming, photocopy
or similar methods may be substit
for the original records.

(e) *Access to records*—(1) *Record*
grantees and subgrantees. The aw
ing agency and the Comptroller G
eral of the United States, or any
their authorized representatives, s
have the right of access to any pe
nent books, documents, papers,
other records of grantees and subg
tees which are pertinent to the gr
in order to make audits, examinati
excerpts, and transcripts.

(2) *Expiration of right of access.*
rights of access in this section m
not be limited to the required ret
tion period but shall last as long as
records are retained.

(f) *Restrictions on public acc*
The Federal Freedom of Informat
Act (5 U.S.C. 552) does not apply
records Unless required by Fede
State, or local law, grantees and s
grantees are not required to per
public access to their records.

§ 1234.43 Enforcement.

(a) *Remedies for noncompliance.* I
grantee or subgrantee materially fa
to comply with any term of an awa
whether stated in a Federal statute
regulation, an assurance, in a Sta
plan or application, a notice of awa
or elsewhere, the awarding agen
may take one or more of the followi
actions, as appropriate in the circu
stances:

(1) Temporarily withhold cash pa
ments pending correction of the de
ciency by the grantee or subgrantee
more severe enforcement action by th
awarding agency,

(2) Disallow (that is, deny both us
of funds and matching credit for) a

or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 1234.35).

§ 1234.44 Termination for convenience.

Except as provided in § 1234.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 1234.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 1234.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 1234.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 1234.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 1234.42;

(d) Property management r
ments in §§ 1234.31 and 1234.32;

(e) Audit requirements in § 12

§ 1234.52 Collection of amounts du

(a) Any funds paid to a gra
excess of the amount to whi
grantee is finally determined to
titled under the terms of the
constitute a debt to the Feder
ernment. If not paid within a r
ble period after demand, the
agency may reduce the debt by:

(1) Making an adminstrative
against other requests for rei
ments,

(2) Withholding advance pa
otherwise due to the grantee, or

(3) Other action permitted by

(b) Except where otherwise p
by statutes or regulations, the
agency will charge interest on a
due debt in accordance with t
eral Claims Collection Stand
CFR Ch. II). The date from w
terest is computed is not exte
litigation or the filing of any
appeal.

Subpart E—Entitlement [Rese

CHAPTER XIII—OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER A—OFFICE OF HUMAN DEVELOPMENT SERVICES, GENERAL PROVISIONS [RESERVED]

SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, HEAD START PROGRAM

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SUBCHAPTER A—OFFICE OF HUMAN DEVELOPMENT SERVICES, GENERAL PROVISIONS [RESERVED]

SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, HEAD START PROGRAM

PART 1301—HEAD START GRANTS ADMINISTRATION

Subpart A—General

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1301.2 Definitions.

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1301.32 Limitation on costs of development and administration.
1301.33 Delegation of program operations.
1301.34 Grantee appeals.

AUTHORITY: 42 U.S.C. 9831 et seq.

SOURCE: 44 FR 24061, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1301.1 Purpose and scope.

This part establishes regulations applicable to program administration and grants management for all grants under the Act, including grants for technical assistance and training and grants for research, demonstration, and pilot projects.

§ 1301.2 Definitions.

For the purposes of this part, unless the context requires otherwise:

"Act" means title V of the Economic Opportunity Act of 1964, as amended.

"Approved costs" means the total budget, including both the Federal share and the non-Federal share, for carrying out the program activities provided for in an approved application for a Head Start program.

"Budget period" means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

"Community" means a city, county, a multi-city or multi-county unit within a state, an Indian reservation, or any neighborhood or other geographic area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

"Delegate agency" means a public or private non-profit organization or agency to which a grantee has delegated all or part of its responsibility for operating a Head Start program.

"Development and administrative costs" are all costs other than those which are incurred in carrying out the education, health, social service, and parent involvement functions prescribed in Part 1304 of this chapter. These costs include, but are not limited to, the personnel and other costs of overall planning, coordination, general program direction, accounting, auditing, bonding, insurance, and the allocated costs of occupying, operating, and maintaining the space utilized for these purposes.

"Head Start Agency" or "grantee" means a local public or private nonprofit agency designated to operate a Head Start program by the responsible HHS official, in accordance with Part 1302 of this chapter.

"Head Start program" means a program, funded under the Act and carried out by a Head Start agency or a delegate agency, that provides ongoing comprehensive child development services.

"Independent auditor" means an individual accountant or an accounting

firm, public or private agency, association, corporation, or partnership, that is sufficiently independent of the agency being audited to render objective and unbiased opinions, conclusions, and judgments.

"Major disaster" means any natural disaster or catastrophe which is of such severity and magnitude as to directly affect the capability of the Head Start agency of agencies providing Head Start programs to the damaged community to continue the programs without an increase in the Federal share above 80 percent.

"Responsible HHS official" means the official of the Department of Health and Human Services who has authority to make grants under the Act.

"Total costs" means the sum of all approved costs incurred in operating a Head Start program during an approved budget period.

Subpart B—General Requirements

§ 1301.10 General.

(a) Except as specified in paragraph (b) of this section, the following HHS regulations shall apply to all grants made under the Act:

45 CFR Part 16 Department grant appeals process (except as provided in § 1301.34)

45 CFR Part 46 Protection of Human Subjects

45 CFR Part 74 Administration of grants

45 CFR Part 75 Informal grant appeals procedures (Indirect cost rates and other cost allocations)

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81 Practice and procedure for hearings under Part 80

45 CFR Part 84 Nondiscrimination on the basis of handicap in Federally assisted programs.

(b) 45 CFR Part 74 is superseded as follows:

(1) Section 1301.11 of this subpart supersedes § 74.15 of Part 74 with respect to insurance and bonding of private, non-profit Head Start agencies; and

(2) Section 1301.12 of this subpart supersedes § 74.61 of Part 74 with respect to audit requirements fo
Head Start agencies.

§ 1301.11 Insurance and bonding.

(a) Private nonprofit Head
agencies and their delegate age
shall carry reasonable amounts o
dent accident insurance, liabilit
surance for accidents of their
ises, and transportation liability
ance.

(b) Private nonprofit Head Star
delegate agencies shall make arr
ments for bonding officials and
ployees authorized to disburse
gram funds.

§ 1301.12 Annual audit of Head Star grams.

(a) An audit of the Head Start
gram covering the prior budget p
of each Head Start agency and it
egate agencies, if any, shall be
by an independent auditor to d
mine:

(1) Whether the agency's fina
statements are accurate;

(2) Whether the agency is comp
with the terms and conditions o
grant; and

(3) Whether appropriate fina
and administrative procedures
controls have been installed and
operating effectively. Head Start
cies shall either include del
agency audits as a part of their
audits or provide for separate
pendent audits of their delegate
cies.

(b) Upon a written request sho
necessity, the responsible HHS of
may approve a period other than
prior budget period to be cover
the annual audit.

(c) Unless otherwise approved b
responsible HHS official, the repo
the audit shall be submitted to th
sponsible HHS official, in the ma
and form prescribed by him or
within 4 months after the prior bu
period.

§ 1301.13 Accounting system certifica

(a) Upon request by the respon
HHS official, each Head Start ag
or its delegate agency shall subm
accounting system certification,
pared by an independent auditor.

ing that the accounting system or systems established by the Head Start agency, or its delegate, has appropriate internal controls for safeguarding assets, checking the accuracy and reliability of accounting data, and promoting operating efficiency.

(b) A Head Start agency shall not delegate any of its Head Start program responsibilities to a delegate agency prior to receiving a certification that the delegate agency's accounting system meets the requirements specified in paragraph (a) of this section.

Subpart C—Federal Financial Assistance

§ 1301.20 Matching requirements.

(a) Federal financial assistance granted under the act for a Head Start program shall not exceed 80 percent of the total costs of the program, unless:

(1) An amount in excess of that percentage is approved under section 1301.21; or

(2) The Head Start agency received Federal financial assistance in excess of 80 percent for any budget period falling within fiscal year 1973 or fiscal year 1974. Under the circumstances described in clause

(3) Of the preceding sentence, the agency is entitled to receive the same percentage of Federal financial assistance that it received during such budget periods.

(b) The non-Federal share will not be required to exceed 20 percent of the total costs of the program.

§ 1301.21 Criteria for increase in Federal financial assistance.

The responsible HHS official, on the basis of a written application and any supporting evidence he or she may require, will approve financial assistance in excess of 80 percent if he or she concludes that the Head Start agency has made a reasonable effort to meet its required non-Federal share but is unable to do so; and the Head Start agency is located in a county:

(a) That has a personal per capita income of less that $3,000 per year; or

(b) That has been involved in a major disaster.

Subpart D—Personnel and General Administration

§ 1301.30 General requirements.

Head Start agencies and delegate agencies shall conduct the Head Start program in an effective and efficient manner, free of political bias or family favoritism. Each agency shall also provide reasonable public access to information and to the agency's records pertaining to the Head Start program.

§ 1301.31 Personnel policies.

(a) Head Start agencies must establish and implement personnel policies for themselves and their delegate agencies. At a minimum, such policies must govern the following: staff qualifications, recruitment and selection, classification of positions, salaries, employee benefits (including leave, holidays, overtime, and fringe benefits), conflicts of interest, official travel, career development, performance evaluations, and employee management relations (including employee grievances and adverse actions).

(b) The policies must be in writing, approved by the Head Start Policy Council or Committee, and made available to all Head Start grantee and delegate agency employees.

(c) The policies must require that all prospective employees must sign a declaration prior to employment which lists:

(1) All pending and prior criminal arrests and charges related to child sexual abuse and their disposition;

(2) Convictions related to other forms of child abuse and/or neglect; and

(3) All convictions of violent felonies.

(d) The declaration required by paragraph (c) of this section may exclude:

(1) Traffic fines of $50.00 or less;

(2) Any offense, other than any offense related to child abuse and/or child sexual abuse or violent felonies, committed before the prospective employee's 18th birthday, which was finally adjudicated in a juvenile court or under a youth offender law;

best copy available

(3) Any conviction the record of which has been expunged under Federal or State law; and

(4) Any conviction set aside under the Federal Youth Corrections Act or similar State authority.

(e) The policies governing recruitment and selection of staff must require that before an employee is hired for a probationary period, the grantee or delegate agency will have conducted:

(1) An interview of the applicant, and

(2) A check of personal and employment references provided by the applicant, including verification of the accurary of the information provided by the applicant.

(f) The policies governing recruitment and selection of staff must provide for a probationary period for all new employees that allows time to monitor employee performance and to examine and act on the results of criminal record checks discussed in paragraph (g) of this section.

(g)(1) The personal policies governing recruitment and selection of permanent Head Start staff must require that before staff are hired on a permanent basis, the grantee or delegate agency will have conducted a State and/or national criminal record check if required by State law and/or administrative requirement.

(2) An agency must not adopt an arbitrary policy of refusal to hire solely on the basis of arrest, a pending criminal charge, or a conviction. The agency must review each case in order to assess the relevancy of an arrest charge or conviction to a hiring decision.

(h) Grantees or delegate agencies must develop a plan for responding to suspected or known child abuse or sexual abuse of Head Start children whether it occurs inside or outside the program. The policy was originally promulgated in the January 26, 1977 FEDERAL REGISTER (42 FR 4970-4971), "Identification and Reporting of Child Abuse and Neglect," and is published as an appendix to this section.

(Approved by the Office of Management and Budget under control number 0980-0173.)

[53 FR 5979, Feb. 29, 1988]

APPENDIX A TO § 1301.31—IDENTIFICA
AND REPORTING OF CHILD ABUSE AND NE

The Chapter N-30-356-1 in the
Start Policy Manual reads as follows:

N-30-356-1-00 Purpose.
10 Scope.
20 Applicable law and policy.
30 Policy.

AUTHORITY: 80 Stat. 2304 (42
2928h).

N-30-356-1-00 *Purpose*. This chapte
forth the policy governing the preve
identification, treatment, and reporti
child abuse and neglect in Head Start.

N-30-356-1-10 *Scope*. This policy a
to all Head Start and delegate agencie
operate or propose to operate a Full-Y
Summer Head Start program, or experi
tal or demonstration programs funde
Head Start. This issuance constitutes
Start policy and noncompliance with
policy will result in appropriate acti
the responsible HEW official.

N-30-356-1-20 *Applicable law and p*
Section 511 of the Headstart-F
Through Act, P.L. 93-644, requires
Start agencies to provide comprehe
health, nutritional educational, social
other services to the children to attain
full potential. The prevention, ident
tion, treatment, and reporting of
abuse and neglect is a part of the
services in Head Start. In order for a
to be eligible for grants under the
Abuse Prevention and Treatment Act (
inafter called "the Act"), P.L. 93-247
State must have a child abuse and ne
reporting law which defines "child
and neglect" substantially as that te
defined in the regulations implementin
Act, 45 CFR 1340.1-2(b). That definiti
as follows:

A. "(b) 'Child abuse and neglect' m
harm or threatened harm to a child's h
or welfare by a person responsible fo
child's health or welfare.

"1. 'Harm or threatened harm to a c
health or welfare' can occur through:
accidental physical or mental injury; s
abuse, as defined by State law; or negle
treatment or maltreatment, including
failure to provide adequate food, clot
or shelter. Provided, however, that a p
or guardian legitimately practicing his
gious beliefs who thereby does not pr
specified medical treatment for a child
that reason alone shall not be conside
negligent parent or guardian; however,
an exception shall not preclude a court
ordering that medical services to be pr
ed to the child, where his health requi

"2. 'Child' means a person under the
of eighteen.

"3. 'A person responsible for a child's health or welfare' includes the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution."

In addition, among other things, the State would have to provide for the reporting of known or suspected instances of child abuse and neglect.

It is to be anticipated that States will attempt to comply with these requirements. However, a Head Start program, in dealing with and reporting child abuse and neglect, will be subject to and will act in accordance with the law of the State in which it operates whether or not that law meets the requirements of the Act. Thus, it is the intention of this policy in the interest of the protection of children to insure compliance with and, in some respects, to supplement State or local law, not to supersede it. Thus, the phrase "child abuse and neglect," as used herein, refers to both the definition of abuse and neglect under applicable State or local law, and the evidentiary standard required for reporters under applicable State or local law.

N-30-356-1-30 *Policy*—A. *General provisions.* 1. Head start agencies and delegate agencies must report child abuse and neglect in accordance with the provisions of applicable State or local law.

a. In those States and localities with laws which require such reporting by pre-school and day care staff, Head Start agencies and delegate agencies must report to the State or local agencies designated by the State under applicable State or local Child Abuse and Neglect reporting law.

b. In those States and localities in which such reporting by pre-school and day care staff is "permissive" under State or local law, Head Start agencies and delegate agencies must report child abuse and neglect if applicable State or local law provides immunity from civil and criminal liability for goodfaith voluntary reporting.

2. Head Start agencies and delegate agencies will preserve the confidentiality of all records pertaining to child abuse or neglect in accordance with applicable State or local law.

3. Consistent with this policy, Head Start programs will not undertake, on their own, to treat cases of child abuse and neglect. Head Start programs will, on the other hand, cooperate fully with child protective service agencies in their communities and make every effort to retain in their programs children allegedly abused or neglected—recognizing that the child's participation in Head Start may be essential in assisting families with abuse or neglect problems.

4. With the approval of the policy council, Head Start programs may wish to make a special effort to include otherwise eligible children suffering from abuse or neglect, as referred by the child protective services agency.

However, it must be emphasized that Head Start is not nor is it to become a primary instrument for the treatment of child abuse and neglect. Nevertheless, Head Start has an important preventative role to play in respect to child abuse and neglect.

B. *Special provisions*—1. *Staff responsibility.* Directors of Head Start agencies and delegate agencies that have not already done so shall immediately designate a staff member who will have responsibility for:

a. Establishing and maintaining cooperative relationships with the agencies providing child protective services in the community, and with any other agency to which child abuse and neglect must be reported under State law, including regular formal and informal communication with staff at all levels of the agencies;

b. Informing parents and staff of what State and local laws require in cases of child abuse and neglect;

c. Knowing what community medical and social services are available for families with an abuse or neglect problem;

d. Reporting instances of child abuse and neglect among Head Start children reportable under State law on behalf of the Head Start program;

e. Discussing the report with the family if it appears desirable or necessary to do so;

f. Informing other staff regarding the process for identifying and reporting child abuse and neglect. (In a number of States it is a statutory requirement for professional child-care staff to report abuse and neglect. Each program should establish a procedure for identification and reporting.)

2. *Training.* Head Start agencies and delegate agencies shall provide orientation and training for staff on the identification and reporting of child abuse and neglect. They should provide an orientation for parents on the need to prevent abuse and neglect and provide protection for abused and neglected children. Such orientation ought to foster a helpful rather than a punitive attitude toward abusing or neglecting parents and other caretakers.

[53 FR 5979, Feb. 29, 1988]

§ 1301.32 Limitation on costs of development and administration.

(a) The costs of developing and administering a Head Start program shall not exceed 15 percent of the total costs of such program, unless the responsible HHS official approves a higher percentage for periods not to exceed 6 months, as necessary to carry out the purpose of the program.

(b) Each Head Start agency shall provide with its application a statement that the costs of development and administration will not exceed 15 percent of the total cost.

§ 1301.33 Delegation of program operations.

Federal financial assistance is not available for program operations where such operations have been delegated to a delegate agency by a Head Start agency unless the delegation of program operations is made by a written agreement and has been approved by the responsible HHS official before the delegation is made.

§ 1301.34 Grantee appeals.

An agency receiving a grant under the Act for technical assistance and training, or for a research, demonstration, or pilot project may appeal adverse decisions in accordance with Part 16 of this title. Head Start agencies are also subject to the appeal procedures in Part 16 except appeals by those agencies for suspension, termination and denial of refunding are subject to Part 1303 of this title.

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

Subpart A—General

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1302.2 Definitions.
1302.3 Consultation with public officials and consumers.
1302.4 Transfer of unexpended balances.
1302.5 Notice for show cause and hearing.

Subpart B—Basis for Selection of Grantees

1302.10 Selection among applicants.
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Subpart C—Change in Grantee Requiring Amendment of Approved Application or Replacement of Head Start Program

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AUTHORITY: Sec. 602(n), 78 Stat. 530, 42 U.S.C. 2942(n); Delegation of Authorities to Secretary of Health and Human Services, 38 FR 19291.

SOURCE: 44 FR 24062, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1302.1 Purpose and scope.

The purpose of this part is to set forth policies and procedures for the selection, initial funding and refunding of Head Start grantees and for the selection of replacement grantees in the event of the voluntary or involuntary termination, or denial of refunding, of Head Start programs. It particularly provides for consideration of the need for selection of a replacement grantee where the continuing eligibility (legal status) and fiscal capability (financial viability) of a grantee to operate a Head Start program is cast in doubt by the cessation of funding under section 519 of the Act or by the occurrence of some other major change. It is intended that Head Start programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start grantees be fully protected.

§ 1302.2 Definitions.

As used in this part—

"Act"means Title V of The Economic Opportunity Act of 1964, as amended.

"Approvable application" means an application for a Head Start program either as an initial application or as an application to amend an approved application governing an on-going Head Start program, which, in addition to showing that the applicant has legal status and financial viability, provides for comprehensive services for children and families and for effective and responsible administration which are in conformity with the Act and applicable regulations, the Head Start Manual and Head Start policies.

"Community action agency" means a public or private nonprofit agency or organization designated as a community action agency by the Director of the Community Services Administration pursuant to section 210(a) or section 210(d) of the Act.

"Community action program" means a program operated by a community action agency.

"Financial viability" means the capability of an applicant or the continuing capability of a grantee to furnish the non-Federal share of the cost of operating an approvable or approved Head Start program.

"Head Start grantee" or "grantee" means a public or private nonprofit agency or organization whose application to operate a Head Start program pursuant to section 514 of the Act has been approved by the responsible HHS official.

"Legal status" means the existence of an applicant or grantee as a public agency or organization under the law of the State in which it is located, or existence as a private nonprofit agency or organization as a legal entity recognized under the law of the State in which it is located. Existence as a private non-profit agency or organization may be established under applicable State or Federal law.

"Responsible HHS official" means the official of the Department of Health and Human Services who has authority to make grants under the Act.

§ 1302.3 Consultation with public officials and consumers.

Responsible HHS officials will consult with Governors, or their representatives, appropriate local general purpose government officials, and Head Start Policy Council and other appropriate representatives of communities to be served on the proposed replacement of Head Start grantees.

§ 1302.4 Transfer of unexpended balances.

When replacing a grantee, unexpended balances of funds in the possession of such grantee in the fiscal year following the fiscal year for which the funds were appropriated may be transferred to the replacement grantee if the approved application of the replacement grantee provides for the continuation of the Head Start services without significant change to the same enrollees and their parents and undertakes to offer employment to the staff of the terminating grantee. A letter of concurrence in the change should be obtained from the terminating grantee whenever possible.

§ 1302.5 Notice for show cause and hearing.

(a) Except in emergency situations, the responsible HHS official will not suspend financial assistance under the Act unless the grantee has been given an opportunity, in accordance with Part 1303, Subpart D, of this chapter, to show cause why such action should not be taken.

(b) The responsible HHS official will not terminate a grant, suspend a grant for longer than 30 days, or deny refunding to a grantee, unless the grantee has been given an opportunity for a hearing in accordance with Part 1303 of this chapter.

Subpart B—Bases for Selection of Grantees

§ 1302.10 Selection among applicants.

The basis for making a selection among applicants for a Head Start program shall be the extent to which the application selected reasonably promises the most effective and responsible Head Start program of the approvable applications submitted in terms of:

(a) The cost-effectiveness of the program proposed to be provided;

(b) The qualifications and experience of the applicant in planning, organizing, and providing comprehensive child development services at the community level;

(c) The provisions made for direct participation of parents in the planning, conduct and administration of the program;

(d) The opportunities provided for employment of target area residents and career development opportunities for paraprofessional and other staff;

(e) The suitability of the facilities and equipment proposed to be utilized in carrying out the Head Start program; and

(f) The administrative and fiscal capabilities of the applicant to administer all Head Start programs carried out in the community.

§ 1302.11 Selection among applicants to replace grantee.

The bases for making a selection among applicants which submit approvable applications to replace a grantee, in addition to the basis in § 1302.10 of this part, shall be:

(a) The extent to which provision is made for a continuation of services to the eligible children who have been participating as enrollees in the program;

(b) The extent to which provision is made for continuation of services to the target area or areas served by the program; and

(c) The extent to which provision is made for continued employment by the applicant of the qualified personnel of the existing program.

§ 1302.12 Priority for previously selected Head Start agencies.

Before selecting Head Start agency, the responsible HHS official, in addition to considering the factors specified in §§ 1302.10 and 1302.11, will give priority to an agency which was receiving funds under the Act on January 4, 1975, to operate a Head Start program.

Subpart C—Change in Grantee Requiring Amendment of Approved Application or Replacement of Head Start Program

§ 1302.20 Grantee to show both legal status and financial viability.

(a) Upon the occurrence of a change in the legal condition of a grantee or of a substantial diminution of the financial resources of a grantee, or both, for example, such as might result from cessation of grants to the grantee under section 514 of the Act, the grantee is required within 30 days after the effective date of the regulations in this Part or the date the grantee has notice or knowledge of the change, whichever is later, to show in writing to the satisfaction of the responsible HHS official that it has and will continue to have legal status and financial viability. Failure to make this showing may result in suspension, termination or denial of refunding.

(b) The responsible HHS official will notify the grantee in writing of the decision as to the grantee's legal status and financial viability within 30 days after receiving the grantee's written submittal.

(c) When it is consistent with proper and efficient administration, the responsible HHS official may extend a grantee's program year to end on the date when a change in its legal condition or a substantial diminution of financial resources, or both, is scheduled to take place.

§ 1302.21 Grantee shows legal status but not financial viability.

(a) If a grantee shows legal status but impaired financial viability the responsible HHS official will entertain a timely request for amendment of the grantee's approved application which restores the grantee's financial viability either by a reduction in the program which produces minimum disruption to services and functions, or by an amendment which incorporates essential functions and services not previously funded as part of the total cost of the Head Start program, and therefore, requires an increase in the amount of the Head Start grant but which will not result in a Federal share of the total cost of the Head Start program in excess of the percentage authorized by the Act or applicable regulations. In considering such a request which includes an increase in the Head Start grant the responsible HHS official will take into account the funds available to him for obligation and whether the proposed increase is consistent with that distribution of Head Start funds which:

(1) Maximizes the number of children served within his area of responsibility, or in the case of experimental or demonstration programs, the experimental or demonstration benefits to be achieved, and

(2) Maintains approximately the same distribution of Head Start program funds to States as exist during the fiscal year in which his decision is made.

(b) A request for amendment will be considered to be timely if it is included with the written submittal required by § 1302.20(a) of this part, submitted within 30 days after receiving the notice required by § 1302.20(b) of this part, or submitted as a part of a timely application for refunding.

(c) The grantee will be notified in writing by the responsible HHS official within 30 days after submission of the requested amendment of the decision to approve or disapprove the requested amendment. If the requested amendment is disapproved the notice will contain a statement of the reasons for disapproval.

§ 1302.22 Suspension or termination of grantee which shows financial viability but not legal status.

If a grantee fails to show that it will continue to have legal status after the date of change even though it may show financial viability, the grant shall be suspended or terminated or refunding shall be denied as of the date of change. If it appears reasonable to the responsible HHS official that the deficiency in legal status will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or the date of submission of a timely request for amendment. If such correction has not been made within the 30 day period the grant shall be terminated.

§ 1302.23 Suspension or termination of grantee which shows legal status but not financial viability.

(a) If the date of change of financial viability precedes or will precede the end of the grantee's program year the grant will be suspended or terminated on that date, or, if a request for amendment has been submitted under § 1302.21 of this part, upon written notice of disapproval of the requested amendment, whichever is later. If it appears reasonable to the responsible HHS official that the deficiency in financial viability will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or notice of disapproval. If such correction has not been made within the 30 day period the grant will be terminated.

§ 1302.24 Denial of refunding of grantee.

(a) If the date of change will coincide with or will come after the end of the program year and the grantee has notice or knowledge of such change prior to the end of the program year any action taken to approve the grantee's application for refunding for the following program year shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and financial viability and on any requested amendment submitted by the grantee. If the requested amendment is disapproved the responsible HHS official may extend the program year in accordance with § 1302.20(c) of this part.

(b) If the date of change coincides with the end of the program year and the grantee does not have notice or knowledge of the change prior thereto and the grantee's application for refunding for the following program year has been approved, such approval shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and viability and on any requested financial amendment submitted by the grantee.

(c) If the date of change will coincide with or will come after the end of the program year and if the responsible HHS official has prior notice thereof from the grantee or other official source such as the Community Services Administration action to approve any application for refunding submitted by the grantee shall be deferred pending decision by the responsible HHS official on the grantee's legal status and financial viability and any requested amendment submitted by the grantee.

(d) When the responsible HHS official determines to approve a requested amendment for refunding he will approve it for the full term of the proposed program period, if that period as approved is no longer than a program year.

§ 1302.25 Control of funds of grantee scheduled for change.

Responsible HHS officials will place strict controls on the release of grant funds to grantees which are scheduled for change by cessation of their grants under section 519 of the Act. Specifically, the following controls will be established:

(a) Funds will be released on a monthly basis regardless of the form of grant payment.

(b) Funds released each month will be limited to the amount required to cover actual disbursements during that period for activities authorized under the approved Head Start program.

(c) The amount of funds released must be approved each month by the responsible HHS official.

PART 1303—PROCEDURES FOR APPEALS FOR HEAD START DELEGATE AGENCIES, AND FOR OPPORTUNITIES TO SHOW CAUSE AND HEARINGS FOR HEAD START GRANTEES

Subpart A—General

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1303.2 Definitions.
1303.3 Right to counsel, counsel fees, travel.
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AUTHORITY: 88 Stat. 2304 (42 U.S.C. 2928h).

SOURCE: 44 FR 24065, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1303.1 Purpose and application.

This part effectuates section 519 of the Act as it applies to grantees and delegate agencies engaged in or wanting to engage in the carrying out of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified adverse action by grantees; and the procedures for reasonable notice and opportunity to show cause in cases of intended or actual suspension of financial assistance by the responsible HHS official or by ACYF and for a full and fair hearing for grantees in cases of denial of refunding or termination of financial assistance by the responsible HHS official or by ACYF.

§ 1303.2 Definitions.

As used in this part—

"Act" means Title V, Economic Opportunity Act of 1964, as amended.

"ACYF" means the Administration for Children, Youth and Families in the Department of Health and Human Services, and includes regional staff.

"Commissioner" means the Commissioner for Children, Youth and Families.

"Delegate agency" means a public or private non-profit organization or agency to which a grantee has delegated the carrying on of all or part of its Head Start programs.

"Current delegate agency" means a public or private non-profit agency which would like to continue to carry on all or part of the Head Start program of the grantee under an arrangement with and as delegate of the grantee.

"Grantee" means the local public or private non-profit agency which has been designated as a Head Start agency under section 514 of the Act and which has been granted assistance by the responsible HHS official or by ACYF to carry on a Head Start program.

"Program account" means the identification of a grouping of related program activities recognized by ACYF which, as an individual grouping or in combination with another grouping or other groupings, constitutes the Head Start program for which a Head Start grantee is furnished Federal financial assistance, and which serves as a unit for planning, budgeting, administering, and reporting the grantee's Head Start program. Examples of program accounts are: Full Year Head Start—Part Day; Full Year Head Start—Full Day; Summer Head Start; Parent and Child Centers; and Head Start Training and Technical Assistance.

"Prospective delegate agency" means a public or private nonprofit agency or organization which would like to serve as a delegate agency.

"Responsible HHS official" means the official who is authorized to make the grant of assistance in question, or his designee.

"Substantial rejection" means that a grantee requires that the funding of a current or prospective delegate agency be reduced to 80 percent or less of the current level of operations or of the amount requested in the application; or that a grantee requires that a program account which has cost or which would cost at least 25 percent of the total cost of the Head Start program in question be eliminated or reduced to 80 percent or less of the current level of operations or of the amount requested in the application.

"Suspension" of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee. "Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Refusal by the granting agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 1303.3 Right to counsel, counsel fees, travel.

(a) Parties to proceedings under this part, including ACYF and delegate agencies which have the right to participate in informal meetings or termination hearings, have the right to be represented by counsel. If a party which is a delegate agency or a grantee does not have an attorney acting in that capacity as a regular member of its staff or on a retainer arrangement, such a party may designate an attorney to represent it in the proceedings and it may transfer sufficient funds from its current operating funds to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the express written approval of the responsible HHS official. Travel and per diem expenses may be paid to such attorney from program funds in conformity with the Standard Government Travel Regulations. A delegate agency or a grantee also may designate two persons to attend and participate in proceedings under this part to which it is a party. Travel and per diem expenses may be paid to such persons from program funds in conformity with the Standard Government Travel Regulations.

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses. The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, shall make payment therefor to the party by way of reimbursement from currently available funds.

§ 1303.4 Other remedies.

The procedures established by this part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

Subpart B—Appeals by Delegat
Agencies

§ 1303.10 Appeal on notice of rejectio
failure to act.

(a) A grantee shall give prompt,
and adequate consideration to appl
tions submitted by current or pros
tive delegate agencies to operate H
Start programs. It shall notify an
plicant in writing within 30 days a
receiving an application of its deci
to reject it either wholly or subst
tially. The notice shall contain a st
ment of the reasons for the decis
and a statement that the applic
has a right to appeal the decision
the responsible HHS official in writ
within 15 days after receipt of
notice.

(b) If a grantee fails to act upon
application of a current or prospect
delegate agency to operate a H
Start program within 30 days after
ceiving the application, such age
has a right to appeal the grant
failure to act in writing to the resp
sible HHS official within 15 days a
the end of the 30 day period. In
case of a current delegate agency
failure of the grantee to act within
days after receiving the applicat
shall be deemed to be a rejection.

(c) A grantee shall not reject the
plication of a current delegate age
on the basis of defects or deficien
in the application or in the operat
of the project without first notify
the agency of what the defects and
ficiencies consist, offering to assist
agency, including by the provision
technical assistance, in making cor
tions, and giving the agency reaso
ble opportunity to make corrections

§ 1303.11 Procedures for appeal by
rent delegate agency.

(a) Within 10 days after receiv
the written appeal of a current de
gate agency, the responsible HHS o
cial will notify both parties, the ap
lant and the grantee, in writing t
the appellant shall have the oppor
nity to submit written material to
responsible HHS official and to m
informally with him and the gran
to show cause why the applicat
should not be denied; that the gran

shall have the opportunity to submit written material for the responsible HHS official and to be present at the informal meeting with him to support its decision on the appellant's application; that the time within which the parties shall submit the written material to the responsible HHS official shall be no later than 14 days after the notice by the responsible HHS official was mailed; and that the appellant may request, no later than 14 days after the notice by the responsible HHS official was mailed, the informal meeting with the responsible HHS official and the grantee. A copy of this subpart and Subpart A of this part will be included with the notice mailed by the responsible HHS official to parties so that they may inform themselves of the nature of the written materials to be submitted, the opportunity for written rebuttal, the issues that are involved in the appeal, and the remedies available.

(b) The current delegate agency shall submit to the responsible HHS official a copy of the material it submitted to the grantee in, and in connection with, its application. It shall also submit to the responsible HHS official a written statement setting forth:

(1) Whether, prior to the grantee's decision or failure to act, the grantee advised the appellant of defects and deficiencies in its application or in the operation of its project, as appropriate.

(i) If so, when and how was such advice given.

(ii) If so, the defects and deficiencies called to the appellant's attention.

(2) Whether the grantee provided the appellant reasonable opportunity to correct the defects and deficiencies referred to in paragraph (b)(1)(ii) of this section.

(i) If so, details of the opportunity that was given.

(ii) If so, whether the grantee provided technical advice and consultation with respect to the correction of the defects and deficiencies.

(A) If the answer to paragraph (b)(2)(ii) of this section is affirmative, describe the assistance provided; and

(B) Describe what the appellant did about correcting the defects and deficiencies.

(3) When and how the grantee notified the appellant of its decision.

(4) Whether the grantee told the appellant the reasons for its decision. If so, how such reasons were communicated to the appellant and what they were.

(5) If it is the appellant's position that the grantee acted arbitrarily or unfairly, the reason why the appellant takes this position.

(6) Any other facts and circumstances which the appellant believes will support its appeal.

(c) In connection with the appeal the grantee shall submit a written statement to the responsible HHS official setting forth:

(1) Whether, prior to rejection of the application, or the failure to act within 30 days after its receipt, the grantee advised the appellant of defects and deficiencies in the application or in the operation of the appellant's project, as appropriate.

(i) If so, when and how was such advice given.

(ii) If so, the defects or deficiencies called to the appellant's attention.

(2) Whether the grantee provided the appellant an opportunity to correct the defects and deficiencies referred to in paragraph (c) of this section.

(i) If so, details of the opportunity that was given.

(ii) If so, whether the grantee provided technical advice and consultation with respect to correction of the defects and deficiencies.

(A) If the answer to paragraph (c)(2)(ii) of this section is affirmative, describe the assistance provided; and

(B) What the appellant did about correcting the defects and deficiencies.

(3) When and how the grantee notified the appellant of the decision.

(4) Whether the grantee told the appellant the reasons for the decision. If so, how such reasons were communicated to the appellant and, what they were.

(5) Why the grantee takes the position that it acted reasonably and fairly in arriving at its decision or in its failure to act.

(6) Any other facts and circumstances which the grantee believes will support its decision or its failure to act.

(d) At the time of submitting the written statement, each party shall furnish a copy of its statement to the other party.

(e) If the appellant does not request an informal meeting, each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply shall be submitted to the responsible HHS official within 10 days after the copy of the other party's written statement was mailed.

(f) If the appellant requests an informal meeting, the meeting will be scheduled by the responsible HHS official as soon as possible, but not sooner than 14 days after the written notice to the parties was mailed by the responsible HHS official, unless the appellant and the grantee consent to an earlier meeting time. The responsible HHS official shall designate either the appropriate regional office or the place where the appellant or grantee is located as the place for holding the meeting.

§ 1303.12 Decision on appeal and review.

(a) The decision of the responsible HHS official will take into account the material submitted in writing and the information presented at the informal meeting. Unless it is found by the responsible HHS official that the grantee acted unfairly and did not have a rational basis for its decision, or its failure to act, or that the grantee failed to comply with paragraph (c), § 1303.10, the grantee will be sustained. The decision of the responsible HHS official will be made within 5 days after the informal meeting. This decision, including a statement of the reasons therefor, will be in writing, and will be mailed immediately to the appellant and the grantee. If the decision is made on the basis of written materials only, the decision will be made within 14 days of the receipt of the materials.

(b) If the decision of the responsible HHS official sustains the decision or failure to act of the grantee, the appellant may, within 14 days of the
date of mailing, make a writter
quest for review of the decision by
Commissioner. If the decision of
responsible HHS official does not
tain the decision or failure to a
the grantee, the grantee may, w
14 days of the date of mailing, ma
written request for review of the
sion by the Commissioner. Upon
request by either party the Com
sioner, or his designee, will review
decision of the responsible HHS
cial, the written material submitte
the appellant and grantee, an
report of the information present
the informal meeting, and, on
basis of this review, make the fina
cision. The decision of the grantee
be sustained unless it is found th
acted unfairly and without a rati
basis for its decision or its failur
act, or that the grantee failed
comply with paragraph (c), § 130
The final decision will be made
later than 30 days after receipt of
request for review. The Commissi
will inform the appellant, the gran
and the responsible HHS officia
writing of the final decision and
reasons therefor.

§ 1303.13 Remedies.

(a) If the decision of the respon
HHS official does not sustain
grantee and there is no timely wri
request for review by the Commiss
er, or if the final decision does not
tain the grantee, the responsible
official will remand the applicatio
the grantee for prompt considera
or reconsideration and decision in
cordance with the criteria set fort
§ 1303.12 (a) and (b) for decision
the appeal, other than failure
comply with paragraph (c), § 130
The grantee shall report its deci
and the reasons therefor in writin
the responsible HHS official withi
days after the date of the remand
the responsible HHS official finds
the grantee gave fair consideratio
the application on remand and tha
decision has a rational basis,
appeal will be dismissed. If the res
sible HHS official finds that the gr
ee failed to give fair consideratio
the application on remand and tha
decision does not have a rational b

or if the grantee fails to act within the 10 days, the responsible HHS official will entertain an application by the appellant for a direct grant. If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action the responsible HHS official deems appropriate in the circumstances. If such an application is not approved, the responsible HHS official will take whatever action he deems appropriate in the circumstances.

(b) If the grantee is not sustained by the responsible HHS official because of failure to comply with paragraph (c), § 1303.10 and there is no timely request for review by the Commissioner, or if the final decision does not sustain the grantee because of such failure, the responsible HHS official will remand the application to the grantee for prompt compliance therewith. Within 60 days after such remand, but not earlier than 30 days, the grantee shall make a written report to the responsible HHS official on compliance activities and progress made. The report shall state whether the grantee will or will not approve the application at that time. If the grantee would reject the application, the report shall contain a detailed statement of the reasons on which rejection would be based. A copy of the report shall be made available to the appellant when the grantee submits it to the responsible HHS official. The appellant shall have 10 days after receiving the report within which to reply thereto in writing to the responsible HHS official. If, on the basis of the written material, the responsible HHS official finds that the grantee, on remand, complied with paragraph (c), § 1303.10, but that the defects and deficiencies continue uncorrected, the appeal will be dismissed. If the responsible HHS official finds that the grantee did not comply on remand the responsible HHS official will entertain an application from the appellant for a direct grant. If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action the responsible HHS official deems appropriate in the circumstances. If such an application is not approved, the responsible HHS official will take whatever action he deems appropriate in the circumstances.

(c) If without fault on the part of the appellant its operating funds are exhausted before its appeal has been decided, ACYF will furnish sufficient funds for the maintenance of its current level of operations until a final decision has been reached.

§ 1303.14 Procedures for appeal by rejected prospective delegate agency.

(a) Within 10 days after receiving the written appeal of a rejected prospective delegate agency the responsible HHS official will notify both parties, the appellant and the grantee, in writing that they shall have the opportunity to submit written material in connection with the appeal; and that the time within which the written material shall be submitted to the responsible HHS official shall be no later than 14 days after the notice by the responsible HHS official was mailed. A copy of this subpart and Subpart A of this Part shall be included with the notice mailed by the responsible HHS official to the parties so that they may inform themselves of the nature of the written material to be submitted, the opportunity for written rebuttal, the issues that are involved in the appeal, and the remedies available.

(b) The appellant shall submit to the responsible HHS official copies of the material it submitted to the grantee in, and in connection with, its application. It shall also submit a written statement setting forth the same material by § 1303.11(b).

(c) In connection with the appeal the grantee shall submit a written statement to the responsible HHS official setting forth the same material required by § 1303.11(c).

(d) At the time of submitting the written statements, each party shall furnish a copy of its statement to the other party.

(e) Each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply shall be submitted to the responsible HHS official within 10 days after the copy of the other party's written statement was mailed.

§ 1303.15 Decision on appeal.

(a) The responsible HHS official may designate a person to review the written material and make a written recommended decision. The final decision will be made by the responsible HHS official no later than 14 days after the receipt of the written material.

(b) A person designated to review the written material and make a recommended decision or the responsible HHS official may ask either or both parties to submit additional written material. A copy of any such request shall be furnished to each party, and each party shall furnish a copy of any such additional written material to the other party.

(c) The recommended, if any, and final decisions will be based upon the written record resulting from the materials submitted by the parties. The decision of the grantee will be sustained unless it is found by the responsible HHS official that it acted unfairly and without a rational basis for its decision. The final decision of the responsible HHS official will be transmitted, in writing, immediately to the appellant and the grantee.

§ 1303.16 Remedies.

If the final decision does not sustain the grantee, the responsible HHS official will remand the application to the grantee for prompt consideration or reconsideration and decision in accordance with the criteria set forth in § 1303.12 (a) and (b) for decision on the appeal. The grantee shall report its decision and the reasons therefor in writing to the responsible HHS official within 10 days after the date of the remand. If the responsible HHS official finds that the grantee gave fair consideration to the application on remand and that its decision had a rational basis, the appeal shall be dismissed. If the responsible HHS official finds that the grantee failed to give fair consideration to the application on remand and that its decision did not have a rational basis, or if the grantee fails to act within the 10 days,
the responsible HHS official will
tertain an application by the appell
for a direct grant. If such an appl
tion is approved, there will be a c
mensurate reduction in the level
funding of the grantee and whate
other action the responsible HHS o
cial deems appropriate in the circu
stances. If such an application is
approved, the responsible HHS offi
will take whatever action he deems
propriate in the circumstances.

§ 1303.17 Procedures when grantee fail act on application of prospective d gate agency.

(a) Within 10 days after receiv
the written appeal based upon the f
ure of the grantee to act upon the
plication of a prospective deleg
agency within 30 days, the responsi
HHS official will notify both parti
the appellant and the grantee, in w
ing that they shall have the oppor
nity to submit written material in c
nection with the appeal; and that
time within which the written mate
al shall be submitted to the respon
ble HHS official shall be no later th
14 days after the notice by the resp
sible HHS official was mailed. A c
of this subpart and Subpart A shall
included with the notice mailed by
responsible HHS official to the part
so that they may inform themselves
the nature of the written material
be submitted, the opportunity
written rebuttal, the issues that are
volved in the appeal, and the remed
available.

(b) The appellant shall submit
following materials in writing to
responsible HHS official:

(1) Copies of the material it subm
ted to the grantee in, and in conn
tion with, its application.

(2) A description of, or copies of,
communications, written or oral,
tween the appellant and the grant
during the 30 day period.

(3) Any other facts and circu
stances which the appellant belie
to be relevant to its appeal.

(c) The grantee shall submit the f
lowing materials in writing to the
sponsible HHS official:

(1) A description of, or copies of,
communications, written or oral,

tween the appellant and the grantee during the 30 day period.

(2) Any other facts and circumstances which the grantee believes to be relevant.

§ 1303.18 Decision on appeal.

(a) The responsible HHS official may designate a person to review the written material and make a written recommended decision. The final decision will be made by the responsible HHS official no later than 14 days after receipt of written material.

(b) The person, if any, designated to review the written material and make a recommended decision or the responsible HHS official may ask either or both parties to submit additional written material. A copy of any such request shall be furnished to each party, and each party shall furnish a copy of any such additional written material to the other party.

(c) The recommended and final decisions will be based upon the written record resulting from the material submitted by the parties. The final decision of the responsible HHS official will be transmitted, in writing, immediately to the appellant and the grantee.

§ 1303.19 Remedies.

The responsible HHS official will remand the application to the grantee for prompt consideration and decision in accordance with the criteria, other than failure to comply with paragraph (c), § 1303.10, set forth in § 1303.12 (a) and (b) for decision on the appeal. The grantee shall report its decision and the reasons therefor in writing to the responsible HHS official within 10 days after the date of the remand. The responsible HHS official may request additional information from either party if he deems it necessary to a decision. If the responsible HHS official finds that the grantee gave fair consideration to the application on remand and that its decision has a rational basis, the appeal shall be dismissed. If the responsible HHS official finds that the grantee failed to give fair consideration to the application on remand and that its decision does not have a rational basis, or if the grantee fails to act within the 10 days, the responsible HHS official may entertain an application by the appellant for a direct grant. If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action the responsible HHS official deems appropriate in the circumstances. If such an application is not approved, the responsible HHS official will take whatever action he deems appropriate in the circumstances.

Subpart C—Denial of Grantee's Application for Refunding

§ 1303.20 Denial of refunding.

A grantee's application for refunding may be denied by the responsible HHS official for circumstances related to the particular grant such as ineffective or improper use of Federal funds or for failure to comply with applicable law, regulations, terms and conditions, or, in accordance with Part 1302 of this chapter, upon selection by the responsible HHS official of another applicant or loss by the grantee of legal status or financial viability. Such denial shall be pursuant to reasonable notice and opportunity for a full and fair hearing.

§ 1303.21 Notice of intended denial and opportunity for hearing to show cause.

When an intention to deny a grantee's application for refunding is arrived at on the basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that the grantee has the opportunity for a full and fair hearing on whether refunding should be denied. If the grantee wants such a hearing the grantee shall request it in writing within a period of time specified in the notice which is not less than 10 days from the date of sending the notice. The responsible HHS official immediately will transmit a copy of the request to the Commissioner.

§ 1303.22 Hearing to show cause. Decision on appeal and review.

(a) The hearing will be scheduled by the responsible HHS official for the earliest practicable date, but not later than 30 days after the grantee's request. Consideration shall be given by the responsible HHS official to a request by a grantee to advance or postpone the scheduled date of a hearing. The hearing shall afford the grantee a full and fair opportunity to demonstrate why the application for refunding should not be denied. ACYF will have the burden of justifying the proposed action to deny refunding. However, if the basis of the proposed denial of refunding is the failure of the grantee to take action required by law, regulation, or other requirement specified in § 1303.20, or the alleged loss of legal status or financial viability, the grantee shall have the burden of proving that such action was timely taken, or that it has legal status or financial viability. Where the issues otherwise relate to the selection of another applicant by the responsible HHS official in accordance with Part 1302 of this Chapter, ACYF will have the burden of justifying the selection of the other applicant.

(b) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible HHS official within a reasonable period of time to be fixed by him upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACYF including the allegations contained in the notice of intention to deny refunding.

(c) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

§ 1303.23 Time and place of hearing.

The hearing shall be held in the appropriate regional office or the place where the grantee is located, at a time and place fixed by the responsible HHS official unless he determines that the convenience of ACYF, or of the parties or their representatives, requires that another place be selected.

§ 1303.24 Conduct of hearing.

(a) The presiding officer at the hearing shall be a person who is an administrative law judge appointed under 5 U.S.C. 3105 or who has served as such an administrative law judge, or, if the Commissioner is unable to make a timely designation of either of such persons as presiding officer, a person deemed qualified by the Commissioner who was not directly involved in the action under review. In any event the Commissioner will designate the presiding officer as promptly as possible.

(b) The presiding officer shall conduct the hearing in accordance with all the provisions of § 1303.35 of Subpart D execpt that "notice of termination" or "termination" wherever such terms appear therein shall read "notice of denial of refunding" or "denial of refunding" as the context requires.

§ 1303.25 Initial decision, exceptions, final decision and review.

(a) The decision of the presiding official shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirements with which it is found that the grantee has failed to comply, if any; the ways in which the grantee has ineffectively or improperly used Federal funds, if any; or the bases for justifying, or the absence of justification for the selection of another applicant. The decision shall be made within 14 days after the conclusion of the hearing and mailed promptly to all parties.

(b) The decision of the presiding officer may provide for continued financial assistance to the grantee and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(c) The decision of the presiding officer shall be an initial decision. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible HHS official his exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible HHS official will, within 20 days of the mailing of the exceptions, review the initial decision and issue his final decision in the matter, including the reasons therefor. The decision of the responsible HHS official may increase, modify, approve, vacate, or mitigate any terms, conditions, or other provisions imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a final decision will be made by the responsible HHS official and a written copy will be given to the grantee.

(e) The grantee may request the Commissioner to review a final decision by the responsible HHS official which provides for the denial of refunding. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Commissioner or his designee will consider the reasons stated by the grantee for seeking the review and will sustain or overrule the final decision of the responsible HHS official or remand the matter to the responsible HHS official for further hearing or consideration. During the course of his review the Commissioner or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. The final decision by the Commissioner will be made not later than 30 days after receipt of the request for review.

(f) If without fault on the part of the grantee its operating funds are exhausted before a final decision has been reached on whether its application for refunding will be denied, ACYF will furnish sufficient funds to the grantee to maintain its current level of operations until such final decision is made.

§ 1303.26 Modification of procedures by consent.

In any proceeding under this subpart the responsible HHS official may alter, eliminate or modify any of the procedural provisions of this subpart, with the written consent of the grantee.

Subpart D—Suspension and Termination of Financial Assistance to Grantees

§ 1303.30 Purpose.

(a) This subpart establishes rules and procedures for the suspension and termination of financial assistance under the Act, for the failure of a grantee to comply with applicable laws, regulations, guidelines, standards, instructions, assurances, terms and conditions, or, in accordance with Part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.

(b) This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964.

§ 1303.31 Suspension on notice and opportunity to show cause.

(a) The responsible HHS official may suspend financial assistance to a grantee in whole or in part for breach or threatened breach of any requirement stated in § 1303.30 pursuant to notice and opportunity to show cause why assistance should not be suspended. However, in emergency cases where the responsible HHS official determines summary action is appropriate, the alternative summary procedures of § 1303.32 will be followed.

(b) The responsible HHS official will notify the grantee by registered or certified mail or by telegram that ACYF intends to suspend financial assistance, in whole or in part, unless good cause is shown why such action should not be taken. The notice will include:

(1) The grounds for the proposed suspension;

(2) The effective date of the proposed suspension;

(3) Information that the grantee has the opportunity to submit written material in opposition to the intended suspension and to meet informally with the responsible HHS official regarding the intended suspension;

(4) Information that the written material must be submitted to the responsible HHS official at least 7 days prior to the effective date of the proposed suspension and that a request for an informal meeting must be made in writing to the responsible HHS official no later than 7 days after the day the notice of intention to suspend was mailed to the grantee;

(5) Invitation to correct the deficiency by voluntary action; and

(6) A copy of this subpart.

(c) If the grantee requests an informal meeting, the responsible HHS official will fix a time and place for the meeting which will not be less than 7 days after the grantee's request is received by ACYF.

(d) The responsible HHS official may on his own initiative establish a time and place for a meeting. In no event will such meeting be scheduled less than 7 days after the notice of intention to suspend was sent to the grantee.

(e) The responsible HHS official may in his discretion extend the period of time or date for making requests or submitting material by the grantee and will notify the grantee of any such extension.

(f) At the time the responsible HHS official sends the notice of intention to suspend financial assistance to the grantee, he will send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and will inform such delegate agency that it is entitled to submit written material in opposition to the intended suspension and to participate in the informal meeting with the responsible HHS official if one is held. In addition, the responsible HHS official may give such notice to any other Head Start delegate agency of the grantee.

(g) Within 3 days of receipt of the notice of intention to suspend financial assistance, the grantee shall send a copy of such notice and a copy
this subpart to all delegate agenci
which would be financially affected
the proposed suspension action. An
delegate agency that wishes to subm
written material may do so within th
time stated in the notice. Any delega
agency that wishes to participate
the informal meeting regarding the i
tended suspension, if not otherwise a
forded a right to participate, may r
quest permission to do so from the r
sponsible HHS official, who may gran
or deny such permission. In actin
upon any such request from a delegat
agency, the responsible HHS offici
will take into account the effect of th
proposed suspension on the particula
delegate agency, the extent to whic
the meeting would become undul
complicated as a result of grantin
such permission, and the extent
which the interests of the delegat
agency requesting such permissio
appear to be adequately represente
by other participants.

(h) The responsible HHS official wi
consider any timely material presen
ed to him in writing, any material pr
sented to him during the course of th
informal meeting as well as any show
ing that the grantee has adequatel
corrected the deficiency which led
the suspension proceedings. The dec
sion of the responsible HHS offici
will be made within 5 days after th
conclusion of the informal meeting.
the responsible HHS official conclude
that the grantee has failed to show
cause why financial assistance shoul
not be suspended, he may suspend f
nancial assistance in whole or in par
and under such terms and condition
as he specifies.

(i) Notice of such suspension will b
promptly transmitted to the grante
by registered or certified mail an
shall become effective upon deliver
Suspension shall not exceed 28 day
unless the responsible HHS officia
and the grantee agree to a continu
ation of the suspension for an addi
tional period of time. If terminatio
proceedings are initiated in accordanc
with § 1303.33, the suspension of fi
nancial assistance will be rescinded.

(j) New obligations incurred by the
grantee during the suspension period
will not be allowed unless the granting

agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

NOTE: Willful misapplication of funds may violate section 301 of the Economic Opportunity Amendments of 1967 (42 U.S.C. 2703), or other criminal statutes.

(k) The responsible HHS official may modify the terms, condition and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspension partly or fully rescinded may, in the discretion of the responsible HHS official, be reimposed with or without further proceedings, except that the total time of suspension may not exceed 28 days unless termination proceedings are initiated in accordance with § 1303.33 or unless the responsible HHS official and the grantee agree to continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of financial assistance will be rescinded.

§ 1303.32 Summary suspension and opportunity to show cause.

(a) The responsible HHS official may suspend financial assistance without prior notice and opportunity to show cause if he determines that immediate suspension is necessary because of a serious risk of:

(1) Substantial injury to or loss of project funds or property, or

(2) Violation of a Federal, State, or local criminal statute, or

(3) Violation of section 576(b) of the Act or of ACYF directive implementing that section of the Act, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(b) The notice of summary suspension will be given to the grantee by registered or certified mail or by telegram and shall become effective upon delivery. The notice will include the following items:

(1) The effective date of the suspension.

(2) The grounds for the suspension.

(3) The extent of terms and conditions of any partial suspension.

(4) A statement forbidding the grantee to make any new expenditures or incur any new obligations in connection with the suspended portion of the program.

(5) A statement advising the grantee that it has an opportunity to show cause why the suspension should be rescinded.

(c) If the grantee requests in writing the opportunity to show cause why the suspension should be rescinded, the responsible HHS official will fix a time and place for an informal meeting for this purpose. This meeting will be held within 7 days after the grantee's request is received by ACYF. Notwithstanding the provisions of this paragraph, the responsible HHS official may proceed to initiate termination proceedings at any time even though financial assistance to the grantee has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible HHS official will rescind the suspension pending the outcome of the termination proceedings.

(d) Notices of summary suspension shall also be furnished by the responsible HHS official and by the grantee to delegate agencies in the same manner as notices of intent to suspend as set forth in § 1303.32 (f) and (g). Delegate agencies shall have the right to participate in the informal meeting as set forth in said paragraphs.

(e) The effective period of a summary suspension of financial assistance may not exceed 10 days unless termination proceedings are initiated in accordance with § 1303.33 or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the grantee, in accordance with paragraph (c) of this section, requests an opportunity to show cause why the summary suspension should be rescinded.

(f) If the grantee requests an opportunity to show cause why a summary suspension should be rescinded, the suspension of financial assistance shall continue in effect until the grantee has been afforded such opportunity and a decision has been made by the responsible HHS official. Such a decision will be made within 5 days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information elicited at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension in effect for an additional 7 days.

(g) The provisions of § 1303.31(j) with respect to expenditures during a period of suspension are applicable to summary suspensions.

§ 1303.33 Termination and hearing.

(a) The responsible HHS official may terminate financial assistance to a grantee in whole or in part for failure to comply with any requirement or for loss of legal status or financial viability as stated in § 1303.30 whether or not such financial assistance has been suspended. Such termination will be pursuant to reasonable notice and the opportunity for a full and fair hearing. If financial assistance has been suspended, the suspension will be rescinded upon initiation of termination proceedings.

(b) If the responsible HHS official believes that alleged noncompliance with any requirement stated in § 1303.30 is serious enough to warrant termination of financial assistance, whether or not financial assistance has been suspended, he will so notify the grantee by registered or certified mail or telegram. The notice will include:

(1) A statement that there are grounds which justify the proposed termination and that sets forth the specific reasons therefor;

(2) If the activities of a delegate agency are the bases, in whole or in part, for the reasons for the proposed termination, the identity of the delegate agency;

(3) Information that the matter has been set down for hearing at a stated time and place or that the grantee has a right to request a hearing in writing within a period of time, specified in the notice which is not later than 10 days from the date of sending notice.

(c) The responsible HHS official immediately will transmit a copy of the grantee's request for a hearing to the Commissioner.

(d) The termination hearing will be scheduled by the responsible HHS official for the earliest practicable date but not later than 30 days after the grantee's request. Consideration shall be given by the responsible HHS official to a request by a grantee to advance or postpone the scheduled date of a hearing. The hearing shall afford the grantee a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations and other requirements specified in § 1303.30. ACYF will have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a grantee to take action required by law, regulation, or other requirement specified in § 1303.30, the grantee shall have the burden of proving that such action was timely taken.

(e) If a grantee requests a hearing, it shall send a copy of its request to all delegate agencies which would be financially affected by the termination of assistance and to each delegate agency identified in the notice. The copies of the request shall be sent to these delegate agencies at the same time the grantee's request is made to ACYF. The grantee shall promptly send ACYF a list of the delegate agencies to which it has sent the copies and the date on which they were sent.

(f) If the responsible HHS official informs a grantee that a proposed termination action has been set down for hearing, the grantee shall within days of its receipt of this notice send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegat agency identified in the notice. The grantee shall send the responsible HHS official a list of all delegate agencies notified and the date of notification.

(g) If the responsible HHS official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in accordance with § 1303.35, request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACYF and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(h) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing.

(i) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible HHS official within a reasonable period of time to be fixed by him upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACYF including the allegations contained in the notice of termination.

(j) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

§ 1303.34 Time and place of hearing.

The termination hearing shall be held in Washington, D.C., or in the appropriate regional office, at a time and place fixed by the responsible HHS official unless he determines that the convenience of ACYF, or of the parties or their representatives, requires that another place be selected.

§ 1303.35 Conduct of hearing.

The presiding officer at the hearing shall be a person who is an administrative law judge appointed under 5 U.S.C. 3105 or who has served as such an administrative law judge, or, if the Commissioner is unable to make a timely designation of either of such persons as presiding officer, a person deemed qualified by the Commissioner who was not directly involved in the action under review. In any event the Commissioner will designate the presiding officer as promptly as possible.

(a) The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

(b) After the notice described in paragraph (i) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney, designated by the General Counsel of the Department of Health and Human Services, who has not represented ACYF or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) Both ACYF and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (i) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(e) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(f) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefor. Even if previously denied, the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(g) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(h) All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(i) The responsible HHS official will send the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity the facts relied on as justifying termination and the ACYF requirements which it is alleged the grantee has violated. The notice will be served and filed not later than 10 days prior to the hearing.

(j) The grantee and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to ACYF and the presiding officer of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(k) All papers and documents filed or sent to a party shall be signed by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person, except that the effective date of the notice that there appear to be grounds which warrant terminating financial assistance shall be the date of its delivery or attempted delivery at the grantee's last known address as reflected in the records of ACYF.

(l) Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(m) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(n) If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions but only if all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange at his expense for a transcript to be made of the proceedings and shall upon request of any other party, furnish such party with a copy of the transcript.

(o) Official notice may be taken of a public document, or part therof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of ACYF. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(p) After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions.

§ 1303.36 Initial decision, exceptions, final decision and review.

(a) The decision of the presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall so specify the requirements with which it is found that the grantee has failed to comply, if any. The decision shall be made within 14 days after the conclusion of the hearing and mailed promptly to all parties.

(b) The decision of the presiding officer may provide for termination of financial assistance to the grantee in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(c) The decision of the presiding officer shall be an initial decision. Any party may, within 20 days of the mailing of such initial decision or such longer period of time as the presiding officer specifies, file with the responsible HHS official his exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible HHS official will, within 20 days of the mailing of the exceptions, review the initial decision and issue his final decision in the matter, including the reasons therefor. The decision of the responsible HHS official may increase, modify, approve, vacate, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a final decision will be made by the responsible HHS official and a written copy will be given to the grantee.

(e) The grantee may request the Commissioner to review a final decision by the responsible HHS official which provides for the termination of financial assistance. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Commissioner or his designee will consider the reasons stated by the grantee for seeking the review and will approve, modify, vacate or mitigate any sanction imposed by the responsible HHS official or remand the matter to the responsible HHS official for further hearing or consideration. During the course of his review the Commissioner or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. The final decision by the Commissioner will be made no later than 30 days after receipt of the request for review.

§ 1303.37 Modification of procedures by consent.

In any proceeding under this subpart the responsible HHS official may alter, eliminate or modify any of the procedural provisions of this subpart, with the consent of the grantee and, in the case of a termination hearing, with the additional consent of all delegate agencies that have a right to participate in the hearing. Such consent must be in writing and be included in the hearing record.

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEES AND DELEGATE AGENCIES

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HEAD START
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THE PARENTS

AUTHORITY: 88 Stat. 2304 (42 U.S.C. 292

SOURCE: 40 FR 27562, June 30, 1975, un
otherwise noted.

Subpart A—General

§ 1304.1-1 Purpose and application.

This part sets out the goals of
Head Start program as they may
achieved by the combined attainm
of the objectives of the basic com
nents of the program, with empha
on the program performance sta
ards necessary and required to att
those objectives. With the required
velopment of plans covering the im
mentation of the performance sta
ards, grantees and delegate agenc
will have firm bases for operati
most likely to lead to demonstra
benefits to children and their famil
While compliance with the perfor
ance standards is required as a con
tion of Federal Head Start funding
is expected that the standards will
largely self-enforcing. This part
plies to all Head Start grantees
delegate agencies.

§ 1304.1-2 Definitions.

As used in this part:

(a) The term "OCD" means
Office of Child Development, Office
Human Development in the U.S.
partment of Health and Human Se
ices, and includes appropriate regio
office staff.

(b) The term "responsible HHS o
cial" means the official who is auth

ized to make the grant of assistance in question, or his designee.

(c) The term "Director" means the Director of the Office of Child Development.

(d) The term "grantee" means the public or private non-profit agency which has been granted assistance by OCD to carry on a Head Start program.

(e) The term "delegate agency" means a public or private nonprofit organization or agency to which a grantee has delegated the carrying on of all or part of its Head Start program.

(f) The term "goal" means the ultimate purpose or interest toward which total Head Start program efforts are directed.

(g) The term "objective" means the ultimate purpose or interest toward which Head Start program component efforts are directed.

(h) The term "program performance standards" or "performance standards" means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(i) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services.

§ 1304.1-3 Head Start Program goals.

(a) The Head Start Program is based on the premise that all children share certain needs, and that children of low income families, in particular, can benefit from a comprehensive developmental program to meet those needs. The Head Start program approach is based on the philosophy that:

(1) A child can benefit most from a comprehensive, interdisciplinary program to foster development and remedy problems as expressed in a broad range of services, and that

(2) The child's entire family, as well as the community must be involved. The program should maximize the strengths and unique experiences of each child. The family, which is perceived as the principal influence on the child's development, must be a direct participant in the program. Local communities are allowed latitude in developing creative program designs so long as the basic goals, objectives and standards of a comprehensive program are adhered to.

(b) The overall goal of the Head Start program is to bring about a greater degree of social competence in children of low income families. By social competence is meant the child's everyday effectiveness in dealing with both present environment and later responsibilities in school and life. Social competence takes into account the interrelatedness of cognitive and intellectual development, physical and mental health, nutritional needs, and other factors that enable a child to function optimally. The Head Start program is a comprehensive developmental approach to helping children achieve social competence. To the accomplishment of this goal, Head Start objectives and performance standards provide for:

(1) The improvement of the child's health and physical abilities, including appropriate steps to correct present physical and mental problems and to enhance every child's access to an adequate diet. The improvement of the family's attitude toward future health care and physical abilities.

(2) The encouragement of self-confidence, spontaneity, curiosity, and self-discipline which will assist in the development of the child's social and emotional health.

(3) The enhancement of the child's mental processes and skills with particular attention to conceptual and communications skills.

(4) The establishment of patterns and expectations of success for the child, which will create a climate of confidence for present and future learning efforts and overall development.

(5) An increase in the ability of the child and the family to relate to each other and to others.

(6) The enhancement of the sense of dignity and self-worth within the child and his family.

§ 1304.1–4 Performance standards plan development.

Each grantee and delegate agency shall develop a plan for implementing the performance standards prescribed in Subparts B, C, D, and E of this part for use in the operation of its Head Start program (hereinafter called "plan," or "performance standards plan"). The plan shall provide that the Head Start program covered thereby shall meet or exceed the performance standards. The plan shall be in writing and shall be developed by the appropriate professional Head Start staff of the grantee or delegate agency with cooperation from other Head Start staff, with technical assistance and advice as needed from personnel of the Regional Office and professional consultants, and with the advice and concurrence of the policy council or policy committee. The plan must be reviewed by grantee or delegate agency staff and the policy council or policy committee at least annually and revised and updated as may be necessary.

§ 1304.1–5 Performance standards implementation and enforcement.

(a) Grantees and delegate agencies must be in compliance with or exceed the performance standards prescribed in Subparts B, C, D, and E, of this part at the commencement of the grantee's program year next following July 1, 1975, effective date of the regulations in this part, or 6 months after that date, whichever is later, and thereafter, unless the period for full compliance is extended in accordance with paragraph (f) of this section.

(b) If the responsible HHS official as a result of information obtained from program self-evaluation, pre-review, or routine monitoring, is aware or has reason to believe that a Head Start program, with respect to performance standards other than those for which the time for compliance has been extended in accordance with paragraph (f) of this section, is not in compliance with performance standards, he shall notify the grantee promptly in writing of the deficiencies and inform the grantee that it, or if the deficiencies are in a Head Start program operated by a delegate agency, the delegate
agency, has a period stated in
notice not to exceed 90 days to co
into compliance. If the notice is w
respect to a delegate agency,
grantee shall immediately notify
delegate agency and inform it of
time within which the deficienc
must be corrected. Upon receiving
notice the grantee or delegate age
shall immediately analyze its op
ations to determine how it might b
comply with the performance sta
ards. In this process it shall revi
among other things, its utilization
all available local resources,
whether it is receiving the benefits
State and other Federal programs
which it is eligible and which are av
able. It shall review and realign wh
feasible program priorities, operatio
and financial and manpower allo
tions. It shall also consider the po
bility of choosing an alternate p
gram option for the delivery of He
Start Services in accordance with O
Notice N-30-334-1, Program Optio
for Project Head Start, attach
hereto as Appendix A, which
grantee, with OCD concurrence, det
mines that it would be able to oper
as a quality program in complia
with performance standards.

(c) The grantee or delegate agen
shall report in writing in detail its
forts to meet the performance sta
ards within the time given in
notice to the responsible HHS offic
A delegate agency shall rep
through the grantee. If the reporti
agency, grantee or delegate agen
determines that it is unable to comp
with the performance standards,
responsible HHS official shall be no
fied promptly in writing by the gra
ee, which notice shall contain a
scription of the deficiencies not able
be corrected and the reasons theref
If insufficient funding is included as
principal reason for inability
comply with performance standar
the notice shall specify the exa
amount, and basis for, the fundi
deficit and efforts made to obta
funding from other sources.

(d) The responsible HHS official
the basis of the reports submitted pu
suant to paragraph (c) of this sectio
will undertake to assist grantees, a
delegate agencies through their gran

ees, to comply with the performance standards, including by furnishing or by recommending technical assistance.

(e) If the grantee or delegate agency has not complied with the performance standards, other than those for which the time for compliance has been extended in accordance with paragraph (f) of this section, within the period stated in the notice issued under paragraph (b) of this section, the grantee shall be notified promptly by the responsible HHS official of the commencement of suspension or termination proceedings or of the intention to deny refunding, as may be appropriate, under Part 1303 (appeals procedures) of this chapter.

(f) The time within which a grantee or delegate agency shall be required to correct deficiencies in implementation of the performance standards may be extended by the responsible HHS official to a maximum of one year, only with respect to the following deficiencies:

(1) The space per child provided by the Head Start program does not comply with the Education Services performance standard but there is no risk to the health or safety of the children;

(2) The Head Start program is unable to provide Medical or Dental Treatment Services as required by Health Services Performance Standards because funding is insufficient and there are no community or other resources available;

(3) The services of a mental health professional is not available or accessible to the program as required by the Health Services Performance Standards; or

(4) The deficient service is not able to be corrected within the 90 days notice period, notwithstanding full effort at compliance, because of lack of funds and outside community resources, but it is reasonable to expect that the services will be brought into compliance within the extended period, and, the overall high quality of the Head Start program otherwise will be maintained during the extension.

Subpart B—Education Services Objectives and Performance Standards

§ 1304.2-1 Education services objectives.

The objectives of the Education Service component of the Head Start program are to:

(a) Provide children with a learning environment and the varied experiences which will help them develop socially, intellectually, physically, and emotionally in a manner appropriate to their age and stage of development toward the overall goal of social competence.

(b) Integrate the educational aspects of the various Head Start components in the daily program of activities.

(c) Involve parents in educational activities of the program to enhance their role as the principal influence on the child's education and development.

(d) Assist parents to increase knowledge, understanding, skills, and experience in child growth and development.

(e) Identify and reinforce experience which occur in the home that parents can utilize as educational activities for their children.

§ 1304.2-2 Education services plan content: Operations.

(a) The education services component of the performance standards plan shall provide strategies for achieving the education objectives. In so doing it shall provide for program activities that include an organized series of experiences designed to meet the individual differences and needs of participating children, the special needs of handicapped children, the needs of specific educational priorities of the local population and the community. Program activities must be carried out in a manner to avoid sex role stereotyping. In addition, the plan shall provide methods for assisting parents in understanding and using alternative ways to foster learning and development of their children.

(b) The education services component of the plan shall provide for:

(1) *A supportive social and emotional climate* which:

(i) Enhances children's understanding of themselves as individuals, and in relation to others, by providing for individual, small group, and large group, activities;

(ii) Gives children many opportunities for success through program activities;

(iii) Provides an environment of acceptance which helps each child build ethnic pride, a positive self-concept, enhance his individual strengths, and develop facility in social relationships.

(2) Development of intellectual skills by:

(i) Encouraging children to solve problems, initiate activities, explore, experiment, question, and gain mastery through learning by doing;

(ii) Promoting language understanding and use in an atmosphere that encourages easy communication among children and between children and adults;

(iii) Working toward recognition of the symbols for letters and numbers according to the individual developmental level of the children;

(iv) Encouraging children to organize their experiences and understand concepts; and

(v) Providing a balanced program of staff directed and child initiated activities.

(3) Promotion of physical growth by:

(i) Providing adequate indoor and outdoor space, materials, equipment, and time for children to use large and small muscles to increase their physical skills; and

(ii) Providing appropriate guidance while children are using equipment and materials in order to promote children's physical growth.

(c) The education services component of the plan shall provide for a program which is individualized to meet the special needs of children from various populations by:

(1) Having a curriculum which is relevant and reflective of the needs of the population served (bilingual/bicultural, multi-cultural, rural, urban, reservation, migrant, etc.);

(2) Having staff and program resources reflective of the racial and ethnic population of the children in the program.

(i) Including persons who speak the primary language of the children and are knowledgeable about their heritage; and, at a minimum, when a m
ity of the children speak a lang
other than English, at least one te
er or aide interacting regularly
the children must speak their
guage; and,

(ii) Where only a few children
single child speak a language diffe
from the rest, one adult in the ce
should be available to communica
the native language;

(3) Including parents in curricu
development and having them ser
resource persons (e.g., for bilingua
cultural activities).

(d) The education services co
nent of the plan shall provide p
dures for on-going observation, rec
ing and evaluation of each ch
growth and development for the
pose of planning activities to suit
vidual needs. It shall provide, also
integrating the educational aspec
other Head Start components into
daily education services program.

(e) The plan shall provide met
for enhancing the knowledge and
derstanding of both staff and par
of the educational and developme
needs and activities of children in
program. These shall include:

(1) Parent participation in plan
the education program, and in ce
classroom and home program a
ties;

(2) Parent training in activities
can be used in the home to reinf
the learning and development of
children in the center;

(3) Parent training in the obs
tion of growth and developmen
their children in the home envi
ment and identification of and
dling special developmental needs;

(4) Participation in staff and s
parent conferences and the makin
periodic home visits (no less than
by members of the education staff;

(5) Staff and parent training, u
a program jointly developed with
components of the Head Start
gram, in child development and be
ioral developmental problems of
school children; and

(6) Staff training in identificatio
and handling children with sp
needs and working with the parent
such children, and in coordinating
evant referral resources.

§ 1304.2-3 Education services plan content: Facilities.

(a) The education services component of the plan shall provide for a physical environment conducive to learning and reflective of the different stages of development of the children. Home-based projects must make affirmative efforts to achieve this environment. For center-based programs, space shall be organized into functional areas recognized by the children, and space, light, ventilation, heat, and other physical arrangements must be consistent with the healtn, safety, and developmental needs of the children. To comply with this standard:

(1) There shall be a safe and effective heating system;

(2) No highly flammable furnishings or decorations shall be used.

(3) Flammable and other dangerous materials and potential poisons shall be stored in locked cabinets or storage facilities accessible only to authorized persons;

(4) Emergency lighting shall be available in case of power failure;

(5) Approved, working fire extinguishers shall be readily available;

(6) Indoor and outdoor premises shall be kept clean and free, on a daily basis, of undesirable and hazardous material and conditions;

(7) Outdoor play areas shall be made so as to prevent children from leaving the premises and getting into unsafe and unsupervised areas;

(8) Paint coatings in premises used for care of children shall be determined to assure the absence of a hazardous quantity of lead;

(9) Rooms shall be well lighted;

(10) A source of water approved by the appropriate local authority shall be available in the facility; and adequate toilets and handwashing facilities shall be available and easily reached by children;

(11) All sewage and liquid wastes shall be disposed of through a sewer system approved by an appropriate, responsible authority, and garbage and trash shall be stored in a safe and sanitary manner until collected;

(12) There shall be at least 35 square feet of indoor space per child available for the care of children (i.e., exclusive of bathrooms, halls, kitchen, and storage places). There shall be at least 75 square feet per child outdoors; and

(13) Adequate provisions shall be made for handicapped children to ensure their safety and comfort.

Evidence that the center meets or exceeds State or local licensing requirements for similar kinds of facilities for fire, health and safety shall be accepted as prima facie compliance with the fire, health and safety requirements of this section.

(b) The plan shall provide for appropriate and sufficient furniture, equipment and materials to meet the needs of the program, and for their arrangement in such a way as to facilitate learning, assure a balanced program of spontaneous and structured activities, and encourage self-reliance in the children. The equipment and materials shall be:

(1) Consistent with the specific educational objectives of the local program;

(2) Consistent with the cultural and ethnic background of the children;

(3) Geared to the age, ability, and developmental needs of the children;

(4) Safe, durable, and kept in good condition;

(5) Stored in a safe and orderly fashion when not in use;

(6) Accessible, attractive, and inviting to the children; and

(7) Designed to provide a variety of learning experiences and to encourage experimentation and exploration.

Subpart C—Health Services Objectives and Performance Standards

§ 1304.3-1 Health services general objectives.

The general objectives of the health services component of the Head Start program are to:

(a) Provide a comprehensive health services program which includes a broad range of medical, dental, mental health and nutrition services to preschool children, including handicapped children, to assist the child's physical, emotional, cognitive and social development toward the overall goal of social competence.

(b) Promote preventive health services and early intervention.

(c) Provide the child's family with the necessary skills and insight and otherwise attempt to link the family to an ongoing health care system to ensure that the child continues to receive comprehensive health care even after leaving the Head Start program.

§ 1304.3-2 Health Services Advisory Committee.

The plan shall provide for the creation of a Health Services Advisory Committee whose purpose shall be advising in the planning, operation and evaluation of the health services program and which shall consist of Head Start parents and health services providers in the community and other specialists in the various health disciplines. (Existing committees may be modified or combined to carry out this function.)

§ 1304.3-3 Medical and dental history, screening, and examinations.

(a) The health services component of the performance standards plan shall provide that for each child enrolled in the Head Start program a complete medical, dental and developmental history will be obtained and recorded, a thorough health screening will be given, and medical and dental examinations will be performed. The plan will provide also for advance parent or guardian authorization for all health services under this subpart.

(b) Health screenings shall include:

(1) Growth assessment (head circumference up to two years old), height, weight and age.

(2) Vision testing.

(3) Hearing testing.

(4) Hemoglobin or hematocrit determination.

(5) Tuberculin testing indicated in OCD Head Start Guidance Material.

(6) Urinalysis.

(7) Based on community health problems, other selected screenings where appropriate, e.g., sickle cell anemia, lead poisoning, and intestinal parasites.

(8) Assessment of current immunization status.

(9) During the course of health screening, procedures must be in effect for identifying speech problems, determining their cause, and provi
services.

(10) Identification of the sp
needs of handicapped children.

(c) Medical examinations for
dren shall include:

(1) Examination of all systems o
gions which are made suspect by
history or screening test.

(2) Search for certain defects in
cific regions common or importan
this age group, i.e., skin, eye, ear,
throat, heart, lungs, and groin (i
nal) area.

(d) The plan shall provide, als
accordance with local and state he
regulations that employed prog
staff have initial health examinati
periodic check-ups, and are foun
be free from communicable dis
and, that voluntary staff be scree
for tuberculosis.

§ 1304.3-4 Medical and dental treatme

(a) The plan shall provide for t
ment and follow-up services which
clude:

(1) Obtaining or arranging for t
ment of all health problems dete
(Where funding is provided by
Head Start funding sources t
must be written documentation
such funds are used to the maxi
feasible extent. Head Start funds
be used only when no other sourc
funding is available).

(2) Completion of all recommen
immunizations—diptheria, pertu
tetanus (DPT), polio, measles, Ger
measles. Mumps immunization s
be provided where appropriate.

(3) Obtaining or arranging for b
dental care services as follows:

(i) Dental examination.

(ii) Services required for the relie
pain or infection.

(iii) Restoration of decayed prim
and permanent teeth.

(iv) Pulp therapy for primary
permanent teeth as necessary.

(v) Extraction of non-restor
teeth.

(vi) Dental prophylaxis and inst
tion in self-care oral hygiene pr
dures.

(vii) Application of topical fluo
in communities which lack adeq

fluoride levels in the public water supply.

(b) There must be a plan of action for medical emergencies. (Indicated in OCD Head Start Guidance Material.)

§ 1304.3-5 Medical and dental records.

The plan shall provide for:

(a) The establishment and maintenance of individual health records which contain the child's medical and developmental history, screening results, medical and dental examination data, and evaluation of this material, and up-to-date information about treatment and follow-up;

(b) Forwarding, with parent consent, the records to either the school or health delivery system or both when the child leaves the program; and

(c) Giving parents a summary of the record which includes information on immunization and follow-up treatment; and

(d) Utilization of the Health Program Assessment Report (HPAR); and

(e) Assurance that in all cases parents will be told the nature of the data to be collected and the uses to which the data will be put, and that the uses will be restricted to the stated purposes.

§ 1304.3-6 Health education.

(a) The plan shall provide for an organized health education program for program staff, parents and children which ensures that:

(1) Parents are provided with information about all available health resources;

(2) Parents are encouraged to become involved in the health care process relating to their child. One or both parents should be encouraged to accompany their child to medical and dental exams and appointments;

(3) Staff are taught and parents are provided the opportunity to learn the principles of preventive health, emergency first-aid measures, and safety practices;

(4) Health education is integrated into on-going classroom and other program activities.

(5) The children are familiarized with all health services they will receive prior to the delivery of those services.

§ 1304.3-7 Mental health objectives.

The objectives of the mental health part of the health services component of the Head Start program are to:

(a) Assist all children participating in the program in emotional, cognitive and social development toward the overall goal of social competence in coordination with the education program and other related component activities;

(b) Provide handicapped children and children with special needs with the necessary mental health services which will ensure that the child and family achieve the full benefits of participation in the program;

(c) Provide staff and parents with an understanding of child growth and development, an appreciation of individual differences, and the need for a supportive environment;

(d) Provide for prevention, early identification and early intervention in problems that interfere with a child's development;

(e) Develop a positive attitude toward mental health services and a recognition of the contribution of psychology, medicine, social services, education and other disciplines to the mental health program; and

(f) Mobilize community resources to serve children with problems that prevent them from coping with their environment.

§ 1304.3-8 Mental health services.

(a) The mental health part of the plan shall provide that a mental health professional shall be available, at least on a consultation basis, to the Head Start program and to the children. The mental health professional shall:

(1) Assist in planning mental health program activities;

(2) Train Head Start staff;

(3) Periodically observe children and consult with teachers and other staff;

(4) Advise and assist in developmental screening and assessment;

(5) Assist in providing special help for children with atypical behavior or development, including speech;

(6) Advise in the utilization of other community resources and referrals;

(7) Orient parents and work with them to achieve the objectives of the mental health program; and

(8) Take appropriate steps in conjunction with health and education services to refer children for diagnostic examination to determine whether their emotional or behavior problems have a physical basis.

(b) The plan shall also provide for:

(1) Attention to pertinent medical and family history of each child so that mental health services can be made readily available when needed;

(2) Use of existing community mental health resources;

(3) Coordination with the education services component to provide a program keyed to individual developmental levels;

(4) Confidentiality of records;

(5) Regular group meetings of parents and program staff;

(6) Parental consent for special mental health services;

(7) Opportunity for parents to obtain individual assistance; and,

(8) Active involvement of parents in planning and implementing the individual mental health needs of their children.

§ 1304.3-9 Nutrition objectives.

The objectives of the nutrition part of the health services component of the Head Start program are to:

(a) Help provide food which will help meet the child's daily nutritional needs in the child's home or in another clean and pleasant environment, recognizing individual differences and cultural patterns, and thereby promote sound physical, social, and emotional growth and development.

(b) Provide an environment for nutritional services which will support and promote the use of the feeding situation as an opportunity for learning;

(c) Help staff, child and family to understand the relationship of nutrition to health, factors which influence food practices, variety of ways to provide for nutritional needs and to apply this knowledge in the development of sound food habits even after leaving the Head Start program;

(d) Demonstrate the interrelationships of nutrition to other activities of the Head Start program and its contribution to the overall child development goals; and

(e) Involve all staff, parents and other community agencies as appropriate in meeting the child's nutritional needs so that nutritional care provided by Head Start complements and supplements that of the home and community.

§ 1304.3-10 Nutrition services.

(a) The nutrition services part of the health services component of the performance standards plan must identify the nutritional needs and problems of the children in the Head Start program and their families. In so doing account must be taken of:

(1) The nutrition assessment data (height, weight, hemoglobin hematocrit) obtained for each child;

(2) Information about family eating habits and special dietary needs and feeding problems, especially of handicapped children; and,

(3) Information about major community nutrition problems.

(b) The plan, designed to assist in meeting the daily nutritional needs of the children, shall provide that:

(1) Every child in a part-day program will receive a quantity of food in meals (preferably hot) and snacks which provides at least ⅓ of daily nutritional needs, with consideration for meeting any special needs of children, including the child with a handicapping condition;

(2) Every child in a full-day program will receive snack(s), lunch, and other meals as appropriate which will provide ½ to ⅔ of daily nutritional needs depending on the length of the program;

(3) All children in morning programs who have not received breakfast at the time they arrive at the Head Start program will be served a nourishing breakfast;

(4) The kinds of food served conform to minimum standards for meal patterns indicated in OCD Head Start Guidance Material;

(5) The quantities of food served conform to recommended amounts indicated in OCD Head Start guidance materials; and,

(6) Meal and snack periods are scheduled appropriately to meet children's needs and are posted along with menus; e.g., breakfast must be served at least 2½ hours before lunch, and snacks must be served at least 1½ hours before lunch or supper.

(c) The plan shall undertake to assure that the nutrition services contribute to the development and socialization of the children by providing that:

(1) A variety of foods which broaden the child's food experience in addition to those that consider cultural and ethnic preferences is served;

(2) Food is not used as punishment or reward, and that children are encouraged but not forced to eat or taste;

(3) The size and number of servings of food reflect consideration of individual children's needs;

(4) Sufficient time is allowed for children to eat;

(5) Chairs, tables, and eating utensils are suitable for the size and developmental level of the children with special consideration for meeting the needs of children with handicapping conditions;

(6) Children and staff, including volunteers, eat together sharing the same menu and a socializing experience in a relaxed atmosphere; and

(7) Opportunity is provided for the involvement of children in activities related to meal service. (For example: family style service.)

(d) The plan shall set forth an organized nutrition education program for staff, parents, and children. This program shall assure that:

(1) Meal periods and food are planned to be used as an integral part of the total education program;

(2) Children participate in learning activities planned to effect the selection and enjoyment of a wide variety of nutritious foods;

(3) Families receive education in the selection and preparation of foods to meet family needs, guidance in home and money management and help in consumer education so that they can fulfill their major role and responsibility for the nutritional health of the family;

(4) All staff, including administrative, receive education in principles of nutrition and their application to child development and family health, and ways to create a good physical, social and emotional environment which supports and promotes development of sound food habits and their role in helping the child and family to achieve adequate nutrition.

(e) The plan shall make special provision for the involvement of parents and appropriate community agencies in planning, implementing, and evaluating the nutrition services. It shall provide that:

(1) The Policy Council or Committee and the Health Services Advisory Committee have opportunity to review and comment on the nutrition services;

(2) The nutritional status of the children will be discussed with their parents;

(3) Information about menus and nutrition activities will be shared regularly with parents;

(4) Parents are informed of the benefits of food assistance programs; and

(5) Community agencies are enlisted to assist eligible families participate in food assistance programs.

(f) The plan shall provide for compliance with applicable local, State, and Federal sanitation laws and regulations for food service operations including standards for storage, preparation and service of food, and health of food handlers, and for posting of evidence of such compliance. The plan shall provide, also, that vendors and caterers supplying food and beverages comply with similar applicable laws and regulations.

(g) The plan shall provide for direction of the nutrition services by a qualified full-time staff nutritionist or for periodic and regularly scheduled supervision by a qualified nutritionist or dietitian as defined in the Head Start Guidance Material. Also, the plan shall provide that all nutrition services staff will receive preservice and in-service training as necessary to demonstrate and maintain proficiency in menu planning, food purchasing, food preparation and storage, and sanitation and personal hygiene.

(h) The plan shall provide for the establishment and maintenance of records covering the nutrition services budget, expenditures for food, menus utilized, numbers and types of meals served daily with separate recordings for children and adults, inspection reports made by health authorities, recipes and any other information deemed necessary for efficient operation.

Subpart D—Social Services Objectives and Performance Standards

§ 1304.4-1 Social services objectives.

The objectives of the social services component of the performance standards plan are to:

(a) Establish and maintain an outreach and recruitment process which systematically insures enrollment of eligible children.

(b) Provide enrollment of eligible children regardless of race, sex, creed, color, national origin, or handicapping condition.

(c) Achieve parent participation in the center and home program and related activities.

(d) Assist the family in its own efforts to improve the condition and quality of family life.

(e) Make parents aware of community services and resources and facilitate their use.

§ 1304.4-2 Social services plan content.

(a) The social services plan shall provide procedures for:

(1) Recruitment of children, taking into account the demographic makeup of the community and the needs of the children and families;

(2) Recruitment of handicapped children;

(3) Providing or referral for appropriate counseling;

(4) Emergency assistance or crisis intervention;

(5) Furnishing information about available community services and how to use them;

(6) Follow-up to assure delivery of needed assistance;

(7) Establishing a role of advocacy and spokesman for Head Start families;

(8) Contacting of parent or guardian with respect to an enrolled child whose participation in the Head Start program is irregular or who has been absent four consecutive days; and

(9) Identification of the social service needs of Head Start families and working with other community agencies to develop programs to meet those needs.

(b) The plan shall provide for close cooperation with existing community resources including:

(1) Helping Head Start parent groups work with other neighborhood and community groups with similar concerns;

(2) Communicating to other community agencies the needs of Head Start families and ways of meeting these needs;

(3) Helping to assure better coordination, cooperation, and information sharing with community agencies;

(4) Calling attention to the inadequacies of existing community services, or to the need for additional services, and assisting in improving available services, or bringing in new services; and

(5) Preparing and making available a community resource list to Head Start staff and families.

(c) The plan shall provide for the establishment, maintenance, and confidentiality of records of up-to-date, pertinent family data, including completed enrollment forms, referral and follow-up reports, reports of contacts with other agencies, and reports of contacts with families.

Subpart E—Parent Involvement Objectives and Performance Standards

§ 1304.5-1 Parent involvement objectives.

The objectives of the parent involvement component of the performance standards plan are to:

(a) Provide a planned program of experiences and activities which support and enhance the parental role as the principal influence in their child's education and development.

(b) Provide a program that recognizes the parent as:

(1) Responsible guardians of their children's well being.

(2) Prime educators of their children.

(3) Contributors to the Head Start program and to their communities.

(c) Provide the following kinds of opportunities for parent participation:

(1) Direct involvement in decision making in program planning and operations.

(2) Participation in classroom and other program activities as paid employees, volunteers or observers.

(3) Activities for parents which they have helped to develop.

(4) Working with their own children in cooperation with Head Start staff.

§ 1304.5-2 Parent Involvement Plan content: Parent participation.

(a) The basic parent participation policy of the Head Start program, with which all Head Start programs must comply as a condition of being granted financial assistance, is contained in Head Start Policy Manual, Instruction I-31—Section B2, The Parents (OCD Transmittal Notice 70.2, dated August 10, 1970). This policy manual instruction is set forth in Appendix B to this part.

(b) The plan shall describe in detail the implementation of Head Start Policy Manual Instruction I-31—section B2, The Parents (Appendix B). The plan shall assure that participation of Head Start parents is voluntary and shall not be required as a condition of the child's enrollment.

§ 1304.5-3 Parent Involvement Plan content: Enhancing development of parenting skills.

The plan shall provide methods and opportunities for involving parents in:

(a) Experiences and activities which lead to enhancing the development of their skills, self-confidence, and sense of independence in fostering an environment in which their children can develop to their full potential.

(b) Experiences in child growth and development which will strengthen their role as the primary influence in their children's lives.

(c) Ways of providing educational and developmental activities for children in the home and community.

(d) Health, mental health, dental and nutrition education.

(e) Identification, and use, of family and community resources to meet the basic life support needs of the family.

(f) Identification of opportunities for continuing education which may lead towards self-enrichment and employment.

(g) Meeting with the Head Start teachers and other appropriate staff for discussion and assessment of their children's individual needs and progress.

§ 1304.5-4 Parent Involvement Plan content: Communications among program management, program staff, and parents.

(a) The plan shall provide for two-way communication between staff and parents carried out on a regular basis throughout the program year which provides information about the program and its services; program activities for the children; the policy groups; and resources within the program and the community. Communication must be designed and carried out in a way which reaches parents and staff effectively. Policy Groups, staff and parents must participate in the planning and development of the communication system used.

(b) The plan shall provide a system for the regular provision of information to members of Policy Groups. The purpose of such communication is to enable the Policy Group to make informed decisions in a timely and effective manner, to share professional expertise and generally to be provided with staff support. At a minimum, information provided will include:

(1) Timetable for planning, development, and submission of proposals;

(2) Head Start policies, guidelines, and other communications from the Office of Child Development;

(3) Financial reports and statements of funds expended in the Head Start account; and

(4) Work plans, grant applications, and personnel policies for Head Start.

(c) The entire Head Start staff shall share responsibility for providing assistance in the conduct of the above activities. In addition, Health Services, Education, and Social Services staff shall contribute their direct services to assist the Parent Involvement staff. If staff resources are not available, the necessary resources shall be sought within the community.

§ 1304.5-5 Parent Involvement Plan content: Parents, area residents, and the program.

The plan shall provide for:

(a) The establishment of effective procedures by which parents and area residents concerned will be enabled to influence the character of programs affecting their interests.

(b) Their regular participation in the implementation of such programs and,

(c) Technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources.

APPENDIX A—PROGRAM OPTIONS FOR PROJECT HEAD START

This appendix sets forth policy governing the development and implementation of variations in program design by local Head Start programs.

N-30-334-1-00 Purpose

This chapter sets forth the policy governing the development and implementation of variations in program design by local Head Start programs.

N-30-334-1-10 Scope

This policy applies to all Head Start grantees and delegate agencies that operate or propose to operate a full year program which provides a set of services to the same child or the same group of children for less than six hours a day. The policy will be applied to all applications submitted by such grantees or delegate agencies on or after April 1, 1973.

N-30-334-1-20 Policy

A. GENERAL PROVISION

Beginning in the fourth quarter of FY 1973 (April 1973), Head Start programs will be permitted and encouraged to consider several program models in addition to the standard Head Start model and select the program option best suited to the needs of the children served and the capabilities and resources of the program staff. The program options that are to be available for local selection are as follows:

The standard Head Start model.
Variations in center attendance.
Double sessions.
Home-based models.
Locally designed variations.

In principle, the Office of Child Development will support any option or design model provided a community can demonstrate in an acceptable proposal that it will result in a quality child development program at reasonable cost and meet Head Start guidelines. Any program option proposed must demonstrate that it meets each of the following conditions:

1. All policies stated in the Head Start Manual for Head Start components must be adhered to, with the exception of those points detailed in the descriptions of each of the options under Special Provisions. This policy is not to be interpreted in any way which would lessen the force of the present Head Start policy which states that, "Programs in which enrollment does not reflect the racial or ethnic composition of disadvantaged families in the area may not be funded . . ." (Head Start Manual 6108-1, page 8).

2. The design and selection of program options is to be based on an assessment of the child development needs and resources of the broader community as well as the needs of the current enrollees and their families.

3. The assignment of children to programs is to be determined by assessing such factors as age or developmental level, family situation, handicaps, health or learning problems, and previous school experience. Discussion with all parents about specific needs of their children and how best to meet those needs must be a priority in such an assessment.

4. Proposed options must be justified as consistent with good developmental practices.

5. All parents whose children participate in any option must be represented in their parent-group organizations in accordance with the revised parent involvement guidelines of the Head Start Policy Manual of August 10, 1970.

6. Program options must receive the approval of the Head Start Policy Council prior to submission to OCD.

7. There must be a specific training plan for staff and volunteers for any option chosen. It should address itself to the requirements and goals of the specific program variations being implemented.

8. The number of hours spent in the Head Start center will vary depending on the option chosen. In all cases, the center activities are to maximize opportunities for meeting the child's developmental needs.

9. The application must demonstrate the ability to conduct the program option

within the limits of the current funding level unless funds are added to the program from other sources. However, some options may enable programs to serve more children within the same funding level. Careful planning and analysis will be necessary to determine the total cost associated with serving additional children. In such planning, the following areas should be considered:

a. Additional medical-dental costs;

b. Increased costs due to separate scheduling and operating practices in the area of pupil and staff transportation;

c. Additional staff for home visits and similar supportive activities;

d. Need for additional recruitment effort;

e. Increased insurance costs;

f. Additions to parent activity funds.

B. SPECIAL PROVISIONS

1. The Standard Head Start Model

Continuation of the present five-day-per-week, center-based classroom format will be optional. Communities electing to continue this format are free to do so provided that they demonstrate through a careful assessment of their needs and capabilities that continuing the present program is in the best interests of the individual children and families served. If this assessment indicates that the present format is not adequately meeting local needs, the program is to consider whether these needs could be met more effectively by one or more of the other options.

2. Variations in Center Attendance

a. Head Start programs may elect to serve some or all children on a less than five-day-per-week basis. All children who attend Head Start on a partial basis must receive the same comprehensive developmental services as children attending the 5-day session, except as otherwise indicated. Shortened hours in the classroom may be supplemented by a parent education program or another option which would assist parents in developing their role as the first and most influential educators of their own children.

In planning for less than a five-day-week classroom schedule, careful consideration must be given to the underlying reasons for the attendance variations. Program planning must specifically address the following questions:

(1) What are the developmental needs of the child? Can they be met as effectively or more effectively by less than a five-day schedule?

(2) What are the needs and desires of the family? Would adjustment factors dictate consecutive-days attendance as opposed to, say, an every-other-day schedule?

(3) How does the curriculum plan fit the age and developmental needs of the children? Does the plan take into account differing needs of children of different ages, and varying needs of the same child over time?

(4) What kind of staffing pattern is required to obtain the program objectives?

b. In all situations where the children are in the center less than five days a week, the program must specify how they will receive comprehensive services. The following examples are illustrative of what this requires.

(1) One-third to one-half of the child's daily nutritional needs must be met each day he attends the center. Parents must, on request, be provided with simple, economical weekly menus and counseling on budgeting, food preparation and sanitation, as well as on how to involve children in food-related activities in the home.

(2) Provisions for complete medical and dental services must be made for all children in accordance with Head Start policies.

(3) Staff-family interaction, as central to the Head Start concept, must be included in any variation plan. Varied scheduling is to provide staff with new and additional opportunities for such interaction.

c. Staff utilization should contribute noticeably to program quality by maximizing staff talent, potential and expertise. Staff training goals must be identified and a training plan devised which will facilitate the implementation of the option. Such training should enable the staff to incorporate curriculum modifications necessary to accommodate the shorter week and to allow for the developmental differences between three-year-olds and five-year-olds.

d. Several attendance variation models are possible in planning the delivery of Head Start services. Attendance schedules must be devised for the children in accordance with their assessed needs. Proposals must describe the methods by which children are assigned to their schedules. The following examples indicate possible scheduling variations. The list is not meant to be exhaustive.

(1) The four-day-week schedule provides four days for center-based activities plus an additional day for center staff to perform special activities, such as:

In-service training for staff, parents and volunteers.

Special experiences for children.

Home visits.

Two days in small groups in homes with parent training by the staff.

(2) Split-session schedules: Two regularly enrolled groups, each meeting two days per week, with the fifth day set aside for such things as in-service training or working with

small groups of parents or children with special needs.

3. Double Sessions

Head Start programs are permitted to operate double sessions as an option. In no case shall the addition of other children result in fewer services for children currently in the program. A program shall not be required, nor shall it be permitted, to conduct double sessions solely as a cost-saving device. In addition to the policies which apply to full-year, part-day program, the following conditions must be met when the double sessions option is utilized:

a. Provisions must be made for a one-hour break between double-session classes when a single teaching staff conducts both halves of a double session. In addition, at least thirty minutes must be allotted prior to *each* session—whether or not a different teaching staff is used—to prepare for the session and set up the classroom environment, as well as to give individual attention to children entering and leaving the center. In some instances where schools serve as center sites, variations in scheduling double sessions may have to be considered.

b. The scheduling of children to attend morning or afternoon sessions must attempt to meet individual children's needs such as receptivity, necessity for naps, and other factors that might prevent full program benefit to some children.

c. Adequate time for staff consultation, planning (staff must plan for each session to meet the needs of particular children enrolled), in-service training and career development must be provided during the working schedule. In some cases, this can only be achieved by a variation in center attendance (e.g., a four-day-week for children).

d. Staff teaching both halves of a double session are not to have the primary responsibility for home visits unless some provision is made for substitute staff. In such cases, special provisions must be made for home visits.

e. Provisions must be made for an increase in supportive personnel and services in relation to the anticipated requirements of additional children and their families.

f. Provisions must be made for custodial services between sessions, including the cleaning of indoor and outdoor spaces.

g. Provisions must be made to maintain high food quality for both sessions. All children should have an opportunity to join in cooking and other food-related activities, preferably with the participation of the cook-manager.

4. Home-Based Models

Head Start grantees may elect to develop and incorporate a home-based model into their current program. Such models would focus on the parent as the primary factor in the child's development and the home as the central facility. These models may be designed along the lines of the Home Start demonstration programs initiated in fifteen communities in FY 1972 or on a model developed by the local community. The following conditions must be met by these grantees in implementing their programs:

a. Comprehensive Services

The same kinds of services which are available to children served in a center-based Head Start program will be available to children served by a home-based program. As in center-based programs, the home-based program must make every possible effort to identify, coordinate, integrate and utilize existing community resources and services (public, reduced-fee, or no-fee) in providing nutritional, health, social and psychological services for its children and their families.

(1) *Nutrition.* In home-based programs, whenever feasible children should receive the same nutrition services as in center-based programs with priority emphasis on nutrition education aimed at helping parents learn to make the best use of existing food resources through food planning, buying and cooking. If periodic, regular or incidental group sessions for children are held, every effort should be made to prepare and serve a nutritious snack or meal. When food is not available to a family, the home-based program must make every effort to put the family in touch with whatever community organization can help supply food. In addition, parents should be informed of all available family assistance programs and should be encouraged to participate in them.

Nutrition education must recognize cultural variations in food preferences and supplement and build upon these preferences rather than attempt to replace them. Thus, food items that are a regular part of a family's diet will be a major focal point of nutrition education.

(2) ***Health.*** Every effort must be made to provide health services through existing resources. Children in home-based programs are to receive the same health services as children in center-based programs.

As with the standard Head Start program, home-based programs shall provide linkages with existing health services for the entire family unit on an as-needed basis. However, Head Start funds may be used to provide health services only for the pre-school members of the family.

(3) ***Psychological and Social Services.*** Home-based programs shall provide needed services through existing community resources or within the sponsoring Head Start

program in accordance with existing Head Start policies.

b. Curriculum for Children

A major emphasis of the program must be to help parents enhance the total development (including cognitive, language, social, emotional and physical) of all their children.

Whatever the educational program or philosophy of a home-based program, it must have a plan or system for developing "individualized" or "personalized" education programs for its children.

In addition, programs must provide material, supplies and equipment (such as tricycles, wagons, blocks, manipulative toys and books) to foster the children's development in their homes as needed. Provision for such materials may be made through lending, cooperative or purchase systems.

Group socialization experiences must be provided on a periodic basis for all children in home-based programs. The proposal must specify what kind of developmental activities will take place in the group setting.

Furthermore, the education component—as well as all program components—must meet the needs of the locale by taking into account appropriate local, ethnic, cultural and language characteristics.

c. Parent Program

Home-based programs reflect the concept that the parent is the first and most influential "educator" and "enabler" of his or her own children. Thus, home-based programs are to place emphasis on developing and expanding the "parenting" role of Head Start parents.

Home-based programs must give both parents (or parent substitutes and other appropriate family members) an opportunity to learn about such things as various approaches to child rearing, ways to stimulate and enhance their children's total development, ways to turn everyday experiences into constructive learning experiences for children, and specific information about health, nutrition and community resources.

d. Evening and Weekend Services

It is suggested that the program make provision for evening and weekend services to families when needed.

e. Career Development

Programs must provide career development opportunities for staff. For example, training of staff should qualify for academic credit or other appropriate credentials whenever possible.

f. Service Delivery System

In their proposals, grantees must describe their system for delivering health, nutrition, psychological and other services that are not provided primarily by the in-home caregiver.

g. Staff Selection

Proposals must describe the program's system for selecting staff in accord with the responsibilities assigned by the program to the staff member. For example, the staff visiting homes must be:

(1) Fluent in the language used by the families they serve;

(2) Responsive listeners;

(3) Knowledgeable about human development, family dynamics, and needs of children;

(4) Knowledgeable about all program components;

(5) Knowledgeable about community resources.

h. Staff Development

Programs must submit a staff and volunteer recruitment plan and a training plan, including content of proposed pre- and in-service training programs, teaching method, descriptions of training staff or consultants, and provisions for continued in-service training. The career development plan must be designed to develop or increase staff member's knowledge about:

(1) Approaches to and techniques of working with parents;

(2) Other home-based or Home Start-like programs;

(3) All Head Start component areas.

i. Volunteers

As in all other Head Start programs, the home-based programs must encourage and provide opportunity for the use of volunteers.

5. Locally Designed Options

In addition to the above models, local programs may elect to design and propose other program options which they find well suited to meet the needs of individual children and the families in their communities. Proposals for local program options must adhere to the following guidelines:

a. They must be derived from an analysis of the present standard Head Start model and must represent a more effective approach to meeting the needs of children in the community.

b. They must be consistent with good developmental practices.

c. They must be consistent with Head Start performance standards and must ensure that all components of Head Start are effectively delivered, unless they are operated as an adjunct to a program which delivers the full range of Head Start services, or unless they represent a special program thrust or circumscribed effort such as:

(1) Health Start-type program or other services such as sickle cell or lead paint screening.

(2) Summer follow-on services for handicapped high risk or other children with special needs.

APPENDIX B—HEAD START POLICY MANUAL: THE PARENTS

This appendix sets forth policy governing the involvement of parents of Head Start children ". . . in the development, conduct, and overall program direction at the local level."

I-30-2 The Parents

A. INTRODUCTION

Head Start believes that the gains made by the child in Head Start must be understood and built upon by the family and the community. To achieve this goal, Head Start provides for the involvement of the child's parents and other members of the family in the experiences he receives in the child development center by giving them many opportunities for a richer appreciation of the young child's needs and how to satisfy them.

Many of the benefits of Head Start are rooted in "change". These changes must take place in the family itself, in the community, and in the attitudes of people and institutions that have an impact on both.

It is clear that the success of Head Start in bringing about substantial changes demands the fullest involvement of the parents, parental-substitutes, and families of children enrolled in its programs. This involvement begins when a Head Start program begins and should gain vigor and vitality as planning and activities go forward.

Successful parental involvement enters into every part of Head Start, influences other anti-poverty programs, helps bring about changes in institutions in the community, and works toward altering the social conditions that have formed the systems that surround the economically disadvantaged child and his family.

Project Head Start must continue to discover new ways for parents to become deeply involved in decision-making about the program and in the development of activities that they deem helpful and important in meeting their particular needs and conditions. For some parents, participation may begin on a simple level and move to more complex levels. For other parents the movement will be immediate, because of past experiences, into complex levels of sharing and giving. Every Head Start program is obligated to provide the channels through which such participation and involvement can be provided for and enriched.

Unless this happens, the goals of H
Start will not be achieved and the prog
itself will remain a creative experience
the preschool child in a setting that is
reinforced by needed changes in social
tems into which the child will move a
his Head Start experience.

This sharing in decisions for the futur
one of the primary aims of parent partic
tion and involvement in Project Head St

B. THE ROLE OF THE PARENTS

Every Head Start Program Must Have
fective Parent Participation. There are
least four major kinds of parent partic
tion in local Head Start programs.

1. PARTICIPATION IN THE PROC
OF MAKING DECISIONS ABOUT T
NATURE AND OPERATION OF T
PROGRAM.

2. PARTICIPATION IN THE CLA
ROOM AS PAID EMPLOYEES, VOL
TEERS OR OBSERVERS.

3. ACTIVITIES FOR THE PAREN
WHICH THEY HAVE HELPED TO
VELOP.

4. WORKING WITH THEIR CHILDR
IN COOPERATION WITH THE STA
OF THE CENTER.

Each of these is essential to an effec
Head Start program both at the gra
level and the delegate agency level. E
Head Start program must hire/designat
Coordinator of Parent Activities to
bring about appropriate parent partic
tion. This staff member may be a volun
in smaller communities.

1. Parent Participation in the Process
Making Decisions About the Nature
Operation of the Program

Head Start Policy Groups

a. *Structure.* The formal structure
which parents can participate in po
making and operation of the program
vary with the local administrative struct
of the program.

Normally, however, the Head Start po
groups will consist of the following:

1. *Head Start Center Committee.*
committee must be set up at the ce
level. Where centers have several classe
is recommended that there also be pa
class committees.

2. *Head Start Policy Committee.* This c
mittee must be set up at the dele
agency level when the program is admi
tered in whole or in part by such age

3. *Head Start Policy Council.* This Cou
must be set up at the grantee level.

When a grantee has delegated the en
Head Start program to one Dele
Agency, it is not necessary to have a Po
Council in addition to a Delegate Ag
Policy Committee. Instead one policy gr

serves both the Grantee Board and the Delegate Agency Board.

b. *Composition.* Chart A describes the composition of each of these groups.

CHART A

Organization	Composition
1 Head Start Center Committee	1 Parents whose children are enrolled in that center.
2 Head Start Policy Committee (delegate agency)	2 At least 50% parents of Head Start children presently enrolled in that delegate agency program plus representatives of the community.[1]
3 Head Start Policy Council (grantee)	3 At least 50% parents of Head Start children presently enrolled in that grantee's program plus representatives of the community.[2]

[1] *Representatives of the Community* (*Delegate Agency level*). A representative of neighborhood community groups (public and private) and of local neighborhood community or professional organizations, which have a concern for children of low income families and can contribute to the development of the program. The number of such representatives will vary depending on the number of organizations which should appropriately be represented. The Delegate Agency determines the composition of their committee (within the above guidelines) and methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on delegate agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee.

[2] *Representatives of the Community* (*Grantee Agency level*). A representative of major agencies (public and private) and major community civic or professional organizations which have a concern for children of low income families and can contribute to the program. The number of such representatives will vary, depending on the number of organizations which should appropriately be represented. The applicant agency determines the composition of the council (within the above guidelines) and the methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on grantee agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee or council.

Special Notes

1. All parents serving on policy groups must be elected by parents of Head Start children currently enrolled in the program.

2. It is strongly recommended that the community action agency board have representation from the Head Start Policy Council to assure coordination of Head Start activities with other CAA programs. Conversely, community action agency board representation on the Policy Council is also recommended.

3. It is important that the membership of policy groups be rotated to assure a regular influx of new ideas into the program. For this purpose, terms of membership must be limited to no more than three years.

4. No staff member (nor members of their families as defined in CAP Memo 23A) of the applicant or delegate agencies shall serve on the council or committee in a voting capacity. Staff members may attend the meetings of councils or committees in a consultative non-voting capacity upon request of the council or committee.

5. Every corporate board operating a Head Start program must have a Policy Committee or Council as defined by HHS. The corporate body and the Policy Committee or Council must not be one and the same.

6. Policy groups for summer programs present a special problem because of the difficulty of electing parent representatives in advance. Therefore, the policy group for one summer program must remain in office until its successors have been elected and taken office. The group from the former program should meet frequently between the end of the program and the election of new members to assure some measure of program continuity. These meetings should be for the purpose of (a) assuring appropriate follow up of the children (b) aiding the development of the upcoming summer Head Start program, (c) writing of the application, (d) hiring of the director and establishment of criteria for hiring staff and, when necessary (e) orientation of the new members. In short, the policy group from a former program must not be dissolved until a new group is elected. The expertise of those parents who have previously served should be used whenever possible.

c. *Functions.* The following paragraphs and charts describe the minimum functions and degrees of responsibility for the various policy groups involved in administration of local Head Start programs. *Local groups may negotiate for additional functions and a greater share of responsibility if all parties agree.* All such agreements are subject to such limitations as may be called for by HHS policy. Questions about this should be referred to your HHS regional office.

(1) The Head Start Center Committee shall carry out at least the following minimum responsibilities:

(a) Assists teacher, center director, and all other persons responsible for the development and operation of every component including curriculum in the Head Start program.

(b) Works closely with classroom teachers and all other component staff to carry out the daily activities program.

(c) Plans, conducts, and participates in informal as well as formal programs and activities for center parents and staff.

(d) Participates in recruiting and screening of center employees within guidelines established by HHS, the Grantee Council and Board, and Delegate Agency Committee and Board.

(2) *The Head Start Policy Committee.* Chart B outlines the major management functions connected with local Head Start program administered by delegate agencies and the degree of responsibility assigned to each participating group.

In addition to those listed functions, the committee shall:

(a) Serve as a link between public and private organizations, the grantee Policy Council, the Delegate Agency Board of Directors, and the community it serves.

(b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.

(c) Plan, coordinate and organize agency-wide activities for parents with the assistance of staff.

(d) Assist in communicating with parents and encouraging their participation in the program.

(e) Aid in recruiting volunteer services from parents, community residents and community organizations, and assist in the mobilization of community resources to meet identified needs.

(f) Administer the Parent Activity funds.

(3) *The Head Start Policy Council.* Chart C outlines the major management functions connected with the Head Start program at the grantee level, whether it be a community action or limited purpose agency, and the degree of responsibility assigned to each participating group.

In addition to those listed functions, the Council shall:

(a) Serve as a link between public and private organizations, the Delegate Agency Policy Committees, Neighborhood Councils, the Grantee Board of Directors and the community it serves.

(b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.

(c) Plan, coordinate and organize agency-wide activities for parents with the assistance of staff.

(d) Approve the selection of Delegate Agencies.

(e) Recruit volunteer services from parents, community residents and community organizations, and mobilizes community resources to meet identified needs.

(f) Distribute Parent Activity funds to Policy Committees.

It may not be easy for Head Start dir
tors and professional staff to share respon
bility when decisions must be made. Ev
when they are committed to involving p
ents, the Head Start staff must take care
avoid dominating meetings by force of th
greater training and experience in the pr
ess of decisionmaking. At these meetin
professionals may be tempted to do most
the talking. They must learn to ask pare
for their ideas, and listen with attention,
tience and understanding. Self-confide
and self-respect are powerful motivat
forces. Activities which bring out th
qualities in parents can prove invaluable
improving family life of young child
from low income homes.

Members of Head Start Policy Gro
whose family income falls below the "pov
ty line index" may receive meeting all
ances or be reimbursed for travel, per di
meal and baby sitting expenses incurred
cause of Policy Group meetings. The pro
dures necessary to secure reimbursem
funds and their regulations are detailed
OEO Instruction #6803-1.

2. Participation in the Classroom as Pa
Employees, Volunteers or Observers

Head Start classes must be open to
ents at times reasonable and convenient
them. There are very few occasions w
the presence of a limited number of pare
would present any problem in operation
the program.

Having parents in the classroom has th
advantages. It:

a. Gives the parents a better understa
ing of what the center is doing for the c
dren and the kinds of home assistance t
may require.

b. Shows the child the depth of his
ents concern.

c. Gives the staff an opportunity to k
the parents better and to learn from th

There are, of course, many center ac
ties outside the classroom (e.g., field t
clinic visits, social occasions) in which
presence of parents is equally desirable.

Parents are one of the categories of
sons who must receive preference for
ployment as non-professionals. Partic
tion as volunteers may also be possible
many parents. Experience obtained as a
unteer may be helpful in qualifying for
professional employment. At a minin
parents should be encouraged to obs
classes several times. In order to permi
thers to observe it might be a good ide
have some parts of the program in
evening or on weekends.

Head Start Centers are encouraged t
aside space within the Center which ca
used by parents for meetings and staff
ferences.

3. Activities for Parents Which They Have Helped To Develop

Head Start programs must develop a plan for parent education programs which are responsive to needs expressed by the parents themselves. Other community agencies should be encouraged to assist in the planning and implementation of these programs.

Parents may also wish to work together on community problems of common concern such as health, housing, education and welfare and to sponsor activities and programs around interests expressed by the group. Policy Committees must anticipate such needs when developing program proposals and include parent activity funds to cover the cost of parent sponsored activities.

4. Working With Their Children in Their Own Home in Connection with the Staff of the Center

HHS requires that each grantee make home visits a part of its program when parents permit such visits. Teachers should visit parents of summer children a minimum of once; in full year programs there should be at least three visits, if the parents have consented to such home visits. (Education staff are now required to make no less than two home visits during a given program year in accordance with § 1304.2-2(e)(4).) In those rare cases where a double shift has been approved for teachers it may be necessary to use other types of personnel to make home visits. Personnel, such as teacher aides, health aides and social workers may also make home visits with, or independently of, the teaching staff but coordinated through the parent program staff in order to eliminate uncoordinated visits.

Head Start staff should develop activities to be used at home by other family members that will reinforce and support the child's total Head Start experience.

Staff, parents and children will all benefit from home visits and activities. Grantees shall not require that parents permit home visits as a condition of the child's participation in Head Start. However, every effort must be made to explain the advantages of visits to parents.

Definitions as used on charts B and C

A. *General Responsibility.* The individual or group with legal and fiscal responsibility guides and directs the carrying out of the function described through the person or group given operating responsibility.

B. *Operating Responsibility.* The individual or group that is directly responsible for carrying out or performing the function, consistent with the general guidance and direction of the individual or group holding general responsibility.

C. *Must Approve or Disapprove.* The individual or group (other than persons or groups holding general and operating responsibility, A and B above) must approve before the decision is finalized or action taken. The individual or group must also have been consulted in the decision making process prior to the point of seeking approval.

If they do not approve, the proposal cannot be adopted, or the proposed action taken, until agreement is reached between the disagreeing groups or individuals.

D. *Must be Consulted.* The individual or group must be called upon before any decision is made or approval is granted to give advice or information but not to make the decision or grant approval.

E. *May be Consulted.* The individual or group may be called upon for information, advice or recommendations by those individuals or groups having general responsibility or operating responsibility.

Function	Chart B—Delegate agency				Chart C—Grantee agency			
	Board	Executive director	Head Start policy committee	Head Start director	Board	Executive director	Head Start policy council	Head Start director
I. PLANNING								
(a) Identify child development needs in the area to be served (by CAA[1] if not delegated)	A	B	D	D	A	B	D	D
(b) Establish goals of Head Start program and develop ways to meet them within HHS guidelines	A	C	C	B	A	C	C	B
(c) Determine delegate agencies and areas in the community in which Head Start programs will operate					A	D	C	B
(d) Determine location of centers or classes	A	D	C	B				
(e) Develop plans to use all available community resources in Head Start	A	D	C	B	A	D	C	B

Function	Chart B—Delegate agency				Chart C—Grantee agency			
	Board	Executive director	Head Start policy committee	Head Start director	Board	Executive director	Head Start policy council	Head Start director
(f) Establish criteria for selection of children within applicable laws and HHS guidelines					A	C	C	
(g) Develop plan for recruitment of children	A	C	C	B				
II. GENERAL ADMINISTRATION								
(a) Determine the composition of the appropriate policy group and the method for setting it up (within HHS guidelines)	A	B	C	D	A	B	C	
(b) Determine what services should be provided to Head Start from the CAA[1] central office and the neighborhood centers					A	B	C	
(c) Determine what services should be provided to Head Start from delegate agency	A	B	C	D				
(d) Establish a method of hearing and resolving community complaints about the Head Start program	D	C	A	B	D	C	A	
(e) Direct the CAA[1] Head Start staff in day-to-day operations					E	A	E	
(f) Direct the delegate agency Head Start staff in day-to-day operations	E	A	E	B				
(g) Insure that standards for acquiring space, equipment, and supplies are met	A	D	D	B	A	D	D	
III. PERSONNEL ADMINISTRATION								
(a) Determine Head Start personnel policies (including establishment of hiring and firing criteria for Head Start staff, career development plans, and employee grievance procedures)								
Grantee agency					A	C	C	
Delegate agency	A	C	C	B				
(b) Hire and fire Head Start Director of grantee agency					A	B	C	
(c) Hire and fire Head Start staff of grantee agency					E	A	C	
(d) Hire and fire Head Start Director of delegate agency	A	B	C					
(e) Hire and fire Head Start staff of delegate agency	E	A	C	B				
IV. GRANT APPLICATION PROCESS								
(a) Prepare request for funds and proposed work program:								
Prior to sending to CAA[1]	A	C	C	B				
Prior to sending to HHS					A	C	C	
(b) Make major changes in budget and work program while program is in operation	A	C	C	B	A	C	C	
(c) Provide information needed for prereview to policy council	A	D	C	B				
(d) Provide information needed for prereview to HHS					A	D	C	
V. EVALUATION								
Conduct self-evaluation of agency's Head Start program	A	D	B	D	A	D	B	

[1] CAA or general term "grantee".

A = General responsibility
B = Operating responsibility
C = Must approve or disapprove
D = Must be consulted
E = May be consulted

PART 1305—ELIGIBILITY REQUIREMENTS AND LIMITATIONS FOR ENROLLMENT IN HEAD START

Sec.

1305.1 Purpose and scope.
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1305.4 Family income eligibility.
1305.5 Handicapped children.
1305.6 Enrollment and re-enrollment.
1305.7 Income verification.
1305.8 Fees policy.

AUTHORITY: 88 Stat. 2300, et seq. (42 U.S.C. 2921, et seq.).

SOURCE: 43 FR 14936, April 7, 1978, unless otherwise noted.

§ 1305.1 Purpose and scope.

This part prescribes eligibility requirements, with respect to age and family income, for enrollment and participation of children in Head Start programs.

§ 1305.2 Definitions.

(a) Terms defined in Part 1301 of this chapter have the same meaning when used in this part, unless the context indicates otherwise.

(b) As used in this part, unless the context indicates otherwise:

(1) The term "income guidelines" means the official poverty line specified by the U.S. Office of Management and Budget.

(2) The term "low-income family" means a family whose total annual income before taxes is equal to, or less than, the income guidelines. The term also includes a family that is receiving public assistance even if family income exceeds the income guidelines.

(3) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children who by reason thereof, require special education and related services.

(4) The term "enrollment year" means the period of time not to exceed twelve months, during which a Head Start program provides classroom or other program activities for children enrolled in the program.

(5) The term "family" means all persons living in the same household who are: (i) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in a Head Start program, and (ii) related to the parent(s) or guardian(s) by blood, marriage, or adoption.

(6) The term "income" means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, social security benefits, unemployment compensation, and public assistance benefits. With respect to a child in foster care, family income is the amount paid to the foster family on behalf of the child by a public or private agency.

§ 1305.3 Age eligibility of children.

Unless the Head Start agency's approved grant provides otherwise, only those children between three years of age and the age of compulsory school attendance are eligible to enroll and participate in the Head Start program.

§ 1305.4 Family income eligibility.

At least 90 percent of the children who are enrolled in each Head Start program shall be from low-income families. If applications for admission to a Head Start program are received for more children from low-income families than the Head Start program can accommodate, the children from the lowest income families shall be given preference.

§ 1305.5 Handicapped children.

No less than 10 percent of the total number of enrollment opportunities in Head Start programs in each State shall be available for handicapped children who are eligible to participate under § 1305.3.

§ 1305.6 Enrollment and re-enrollment.

(a) An application for enrollment of children in a Head Start program may be made at any time during the program year. The Head Start agency must make an eligibility determination prior to permitting a child to participate in the Head Start program.

(b) If a child has been found eligible and is participating in a Head Start program, he or she remains eligible through the enrollment year with respect to which such eligibility determination was made and the immediately succeeding enrollment year.

§ 1305.7 Income verification.

(a) The family income shall be verified by a Head Start agency before determining that a child is eligible to participate in the program.

(b) Verification shall include examination of any of the following: Individual Income Tax Form 1040, W-2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status and recipients of public assistance.

(c) A signed statement by an employee of the Head Start agency, identifying which of these documents was examined and stating that the child is eligible to participate in the program, shall be maintained to indicate that verification has been made.

§ 1305.8 Fees policy.

A Head Start agency shall not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the family of a child determined to be eligible for participation by a Head Start program volunteers to pay part or all of the costs of the child's participation, the Head Start agency may accept the voluntary payments. Under no circumstances shall a Head Start agency solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

SUBCHAPTER C—THE ADMINISTRATION ON AGING, OLDER AMERICANS PROGRAMS

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

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AUTHORITY: 42 U.S.C. 3001 et seq.; Title III of the Older Americans Act, as Amended.

SOURCE: 53 FR 33766, Aug. 31, 1988, unless otherwise noted.

Subpart A—Introduction

§1321.1 Basis and purpose of this part.

(a) This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under Title III of the Older Americans Act, as amended (Act). These requirements include:

(1) Designation and responsibilities of State agencies;

(2) State plans and amendments;

(3) Services delivery; and

(4) Hearing procedures for applicants for planning and services area designation.

(b) The requirements of this part are based on Title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans, to stimulate the development or enhancement of comprehensive and coordinated community-based systems resulting in a continuum of services to older persons with special emphasis on older individuals with the greatest economic or social need, with particular attention to low-income minority individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation and delivery of a comprehensive array of services and opportunities for all older Americans in the community. The intent is to use Title III funds as a catalyst in bringing together public and private resources in the community to assure the provision of a full range of efficient, well coordinated and accessible services for older persons.

(c) Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area for the purpose of building comprehensive systems for older people throughout the State. Area agencies in turn make subgrants or contracts to service providers to perform certain specified functions.

§ 1321.3 Definitions.

"Act" means the Older Americans Act of 1965 as amended.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department" means the Department of Health and Human Services.

"Direct services," as used in this part, means any activity performed to provide services directly to an individual older person by the staff of a service provider, an area agency, or a State agency in a single planning and service area State.

"Fiscal year," as used in this part, means the Federal Fiscal Year.

"Frail," as used in this part, means having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or which threatens the capacity of an individual to live independently.

"Human services," as used in § 1321.41(a)(1) of this part, with respect to criteria for designation of a statewide planning and service area, means social, health, or welfare services.

"In-home service," as used in this part, includes: (a) Homemaker and home health aides; (b) visiting and telephone reassurance; (c) chore maintenance; (d) in-home respite care for families, including adult day care as a respite service for families; and (e) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs, except that not more than $150 per client may be expended under this part for such modification.

"Means test," as used in the provison of services, means the use of an older person's income or resource to deny or limit that person's receipt of services under this part.

"Official duties," as used in section 307(a)(12)(J) of the Act with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act or State law and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

"Periodic," as used in sections 306(a)(6) and 307(a)(8) of the Act with respect to evaluations of, and public hearings on, activities carried out under State and area plans, means, at a minimum, once each fiscal year.

"Reservation," as used in section 305(b)(4) of the Act with respect to the designation of planning and service areas, means any federally or State recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaskan Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

"Service provider," as used in section 306(a)(1) of the Act with respect to the provison of supportive and nutrition services, means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

"Severe disability," as used to carry out the provisions of the Act, means a severe chronic disability attributable to mental and/or physical impairment of an individual that:

(a) Is likely to continue indefinitely; and

(b) Results in substantial functional limitation in 3 or more of the following major life activities:

(1) Self-care,

(2) Receptive and expressive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for independent living, and

(7) Economic self-sufficiency.

§ 1321.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board;

(b) 45 CFR Part 74—Administration of Grants, except Subpart N;

(c) 45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(d) 45 CFR Part 81—Practice and Procedures for Hearings Under Part 80 of this Title;

(e) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation;

(f) 45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;

(g) 45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(h) 45 CFR Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities; and

(i) 5 CFR Part 900, Subpart F, Standards for a Merit System of Personnel Administration.

Subpart B—State Agency Responsibilities

§ 1321.7 Mission of the State agency.

(a) The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) The State agency shall designate area agencies on aging for the purpose of carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as its area agencies on aging only those sub-state agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.53 below.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Older Americans Act are used to carry out the mission described for area agencies in § 1321.53 below.

§ 1321.9 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part and serve as the effective visible advocate for the elderly within the State.

(b) The State agency shall have an adequate number of qualified staff to carry out the functions prescribed in this part.

(c) The State agency shall have within the State agency, or shall contract or otherwise arrange with another agency or organization, as permitted by section 307(a)(12)(A), an Office of the State Long-Term Care Ombudsman, with a full-time State ombudsman and such other staff as are appropriate.

(d) If a State statute establishes a State ombudsman program which will perform the functions of section 307(a)(12) of the Act, the State agency continues to be responsible to assure that all of the requirements of the Act for this program are met regardless of the State legislation or source of funds. In such cases, the Governor shall confirm this through an assurance in the State plan.

1321.11 State agency policies.

(a) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the ombudsman program whether operated directly by the State agency or under contract. These policies shall be developed in consultation with other appropriate parties in the State. The State agency is responsible for enforcement of these policies.

(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness. In monitoring the ombudsman program, access to files, minus the identity of any complainant or resident of a long-term care facility, shall be available only to the director of the State agency on aging and one other senior manager of the State agency designated by the State director for this purpose. In the conduct of the monitoring of the ombudsman program, the confidentiality protections concerning any complainant or resident of a long term care facility as prescribed in section 307(a)(12) of the Act shall be strictly adhered to.

§ 1321.13 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate and comment on Federal, State and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals and recommend any changes in these which the State agency considers to be appropriate;

(2) Provide technical assistance to agencies, organizations, associations, or individuals representing older persons; and

(3) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby the Congress.

§ 1321.15 Duration, format and effective date of the State plan.

(a) A State may use its own judgment as to the format to use for the plan, how to collect information for the plan, and whether the plan will remain in effect for two, three or four years.

(b) An approved State plan or amendment, as indentified in § 1321.17, becomes effective on the date designated by the Commissioner.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval, as identified in § 1321.17 and § 1321.19, until it is approved.

§ 1321.17 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification by the State of the sole State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan indicating the proposed use of all Title III funds administered by a State agency, and the distribution of Title III funds to each planning and service area.

(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if appropriate.

(e) Provision of prior Federal fiscal year information related to low income minority and rural older individuals as required by sections 307(a)(23) and (29) of the Act.

(f) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under §§ 1321.5 through 1321.75 of this part, and the following assurances as prescribed by the Commissioner:

(1) Each area agency engages only in activities which are consistent with its statutory mission as prescribed in the Act and as specified in State policies under § 1321.11;

(2) Preference is given to older persons in greatest social or economic need in the provision of services under the plan;

(3) Procedures exist to ensure that all services under this part are provided without use of any means tests;

(4) All services provided under Title III meet any existing State and local licensing, health and safety requirements for the provision of those services;

(5) Older persons are provided opportunities to voluntarily contribute to the cost of services;

(6) Area plans shall specify as submitted, or be amended annually to include, details of the amount of funds expended for each priority service during the past fiscal year;

(7) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies where area agencies have been designated;

(8) The State agency will require area agencies on aging to arrange for outreach at the community level that identifies individuals eligible for assistance under this Act and other programs, both public and private, and informs them of the availability of assistance. The outreach efforts shall place special emphasis on reaching older individuals with the greatest economic or social needs with particular attention to low income minority individuals, including outreach to identify older Indians in the planning and service area and inform such older Indians of the availability of assistance under the Act.

(9) The State agency shall have and employ appropriate procedures for data collection from area agencies on aging to permit the State to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such form as the Commissioner directs; and

(10) If the State agency proposes to use funds received under section 303(f) of the Act for services other than those for preventive health specified in section 361, the State plan shall demonstrate the unmet need for the services and explain how the services are appropriate to improve the quality of life of older individuals, particularly those with the greatest economic or social need, with special attention to low-income minorities.

(11) Area agencies shall compile available information, with necessary supplementation, on courses of post-secondary education offered to older individuals with little or no tuition. The assurance shall include a commitment by the area agencies to make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places.

(12) Individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under this part shall be provided a meal on the same

basis that meals are provided to volunteers pursuant to section 307(a)(13)(I) of the Act.

(13) The services provided under this part will be coordinated, where appropriate, with the services provided under Title VI of the Act.

(14)(i) The State agency will not fund program development and coordinated activities as a cost of supportive services for the administration of area plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

(ii) State and area agencies on aging will, consistent with budgeting cycles (annually, biannually, or otherwise), submit the details of proposals to pay for program development and coordination as a cost of supportive services, to the general public for review and comment; and

(iii) The State agency certifies that any such expenditure by an area agency will have a direct and positive impact on the enhancement of services for older persons in the planning and service area.

(15) The State agency will assure that where there is a significant population of older Indians in any planning and service area that the area agency will provide for outreach as required by section 306(a)(6)(N) of the Act.

§ 1321.19 Amendments to the State plan.

(a) A State shall amend the State plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations,

(2) A material change in any law, organization, policy or State agency operation, or

(3) Information required annually by sections 307(a) (23) and (29) of the Act.

(b) Information required by paragraph (a)(3) of this section shall be submitted according to guidelines prescribed by the Commissioner.

(c) If a State intends to amend provisions of its plan required under §§ 1321.17 (a) or (f), it shall submit its proposed amendment to the Commissioner for approval. If the State changes any of the provisions of its plan required under § 1321.17 (b) through (d), it shall amend the plan and notify the Commissioner. A State need only submit the amended portions of the plan.

§ 1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.

Each State plan, or plan amendment which requires approval of the Commissioner, shall be signed by the Governor or the Governor's designee and submitted to the Commissioner to be considered for approval at least 45 calendar days before the proposed effective date of the plan or plan amendment.

§ 1321.23 Notification of State plan or State plan amendment approval.

(a) The Commissioner approves a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor in writing, giving the reasons for the proposed disapproval, and informs the State agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in Subpart E of this part.

§ 1321.25 Restriction of delegation of authority to other agencies.

A State or area agency may not delegate to another agency the authority to award or administer funds under this part.

§ 1321.27 Public participation.

The State agency shall have a mechanism to obtain and shall consider the views of older persons and the public in developing and administering the State plan.

§ 1321.29 Designation of planning and service areas.

(a) Any unit of general purpose local government, region within a State recognized for area wide planning, metropolitan area, or Indian reservation may make application to the State agency to be designated as a planning and service area, in accordance with State agency procedures.

(b) A State agency shall approve or disapprove any application submitted under paragraph (a) of this section.

(c) Any applicant under paragraph (a) of this section whose application for designation as a planning and service area is denied by a State agency may appeal the denial to the State agency, under procedures specified by the State agency.

(d) If the State denies an applicant for designation as a planning and service area under paragraph (a) of this section, the State shall provide a hearing on the denial of the application, if requested by the applicant, as well as issue a written decision.

§ 1321.31 Appeal to Commissioner.

This section sets forth the procedures the Commissioner follows for providing hearings to applicants for designation as a planning and service area, under § 1321.29(a), whose application is denied by the State agency.

(a) Any applicant for designation as a planning and service area under § 1321.29(a) whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Commissioner in writing within 30 days following receipt of a State's hearing decision.

(b) The Commissioner, or the Commissioner's designee, holds a hearing, and issues a written decision, within 60 days following receipt of an applicant's written request to appeal the State agency hearing decision to deny the applicant's request under § 1321.29(a).

(c) When the Commissioner receives an appeal, the Commissioner requests the State Agency to submit:

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(d) The procedures for the appeal consist of:

(1) Prior written notice to the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(e) The Commissioner may:

(1) Deny the appeal and uphold the decision of a State agency;

(2) Uphold the appeal and require a State agency to designate the applicant as a planning and service area; or

(3) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(f) The Commissioner will uphold the decision of the State agency if it followed the procedures specified in § 1321.29, and the hearing decision is not manifestly inconsistent with the purpose of this part.

(g) The Commissioner's decision to uphold the decision of a State agency does not extend beyond the period of the approved State plan.

§ 1321.33 Designation of area agencies.

An area agency may be any of the types of agencies under section 305(c) of the Act. A State may not designate any regional or local office of the State as an area agency. However, when a new area agency on aging is designated, the State shall give right of first refusal to a unit of general purpose local government as required in section 305(b)(5)(B) of the Act. If the unit of general purpose local government chooses not to exercise this right, the State shall then give preference to an established office on aging as required in section 305(c)(5) of the Act.

§ 1321.35 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act or of this part or policies and procedures established and published by the State agency on aging; or

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or in conflict with the requirement of the Act that it function only as an area agency on aging.

(b) If a State agency withdraws an area agency's designation under paragraph (a) of this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend the 180-day period if a State agency:

(1) Notifies the Commissioner in writing of its action under paragraph (c) of this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Commissioner a need for the extension.

§ 1321.37 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, shall develop and use an intrastate funding formula for the allocation of funds to area agencies under this part. The State agency shall publish the formula for review and comment by older persons, other appropriate agencies and organizations and the general public. The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals. The State agency shall review and update its formula as often as a new State plan is submitted for approval.

(b) The intrastate funding formula shall provide for a separate allocation of funds received under section 303(f) for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(1) Which are medically underserved; and

(2) In which there are large numbers of individuals who have the greatest economic and social need for such services.

(c) The State agency shall submit its intrastate formula to the Commissioner for review and comment. The intrastate formula shall be submitted separately from the State plan.

§ 1321.41 Single State planning and service area.

(a) The Commissioner will approve the application of a State which was, on or before October 1, 1980, a single planning and service area, to continue as a single planning and service area if the State agency demonstrates that:

(1) The State is not already divided for purposes of planning and administering human services; or

(2) The State is so small or rural that the purposes of this part would be impeded if the State were divided into planning and services areas; and

(3) The State agency has the capacity to carry out the responsibilities of an area agency, as specified in the Act.

(b) Prior to the Commissioner's approval for a State to continue as a single planning and service area, all the requirements and procedures in § 1321.29 shall be met.

(c) If the Commissioner approves a State's application under paragraph (a) this section:

(1) The Commissioner notifies the State agency to develop a single State planning and service area plan which meets the requirements of section 306 and 307 of the Act.

(2) A State agency shall meet all the State and area agency function requirements specified in the Act.

(d) If the Commissioner denies the application because a State fails to meet the criteria or requirements set forth in paragraphs (a) or (b) of this section, the Commissioner notifies the State that it shall follow procedures in section 305(A)(1)(E) of the Act to divide the State into planning and service areas.

§ 1321.43 Interstate planning and service area.

(a) Before requesting permission of the Commissioner to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State, governing the administration of the interstate planning and service area.

(b) The lead State shall request permission of the Commissioner to designate an interstate planning and service area.

(c) The lead State shall submit the request together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Commissioner's approval for States to designate an interstate planning and service area, the Commissioner shall determine that all applicable requirements and procedures in § 1321.29 and § 1321.33 of this part, shall be met.

(e) If the request is approved, the Commissioner, based on the agreement between the States, increases the allotment of the State with lead responsibility for administering the programs within the interstate area and reduces the allotment(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallotment of funds in proportion to the number of individuals age 60 and over for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallotment of funds based on the intrastate funding formula of the State(s) without lead responsibility.

§ 1321.45 Transfer between congregate and home-delivered nutrition service allotments.

(a) A State agency, without the approval of the Commissioner, may transfer between allotments up to 30 percent of a State's separate allotments for congregate and home-delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 30 percent of a State's separate allotments for congregate and home-delivered nutrition services. A State agency desiring such a transfer of allotment shall:

(1) Specify the percent which it proposes to transfer from one allotment to the other;

(2) Specify whether the proposed transfer is for the entire period of a State plan or a protion of a plan period; and

(3) Specify the purpose of the proposed transfer.

§ 1321.47 Statewide non-Federal share requirements.

The statewide non-Federal share for State or area plan administration shall not be less than 25 percent of the funds usesd under this part. All services statewide, including ombudsman services and services funded under Title III-B, C, D, E and F, shall be funded on a statewide basis with a non-Federal share of not less than 15 percent. Matching requirements for individual area agencies are determined by the State agency.

§ 1321.49 State agency maintenance of effort.

In order to avoid a penalty, each fiscal year the State agency, to meet the required non-federal share applicable to its allotments under this part, shall spend under the State plan for both services and administration at least the average amount of State funds it spent under the plan for the three previous fiscal years. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for supportive and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures.

§ 1321.51 Confidentiality and disclosure of information.

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an order person, or obtained from an older person by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A State or area agency on aging may not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

§ 1321.52 Evaluation of unmet need.

Each State shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to section 307(a)(3)(A) of the Act to the Commissioner. The evaluations for each State shall consider all services in these categories regardless of the source of funding for the services. This information shall be submitted not later than June 30, 1989 and shall conform to guidance issued by the Commissioner.

Subpart C—Area Agency Responsibilities

§ 1321.53 Mission of the area agency.

(a) The Older Americans Act inten
that the area agency on aging shall
the leader relative to all aging issu
on behalf of all older persons in t
planning and service area. This mea
that the area agency shall proactive
carry out, under the leadership and
rection of the State agency, a wi
range of functions related to advoca
planning, coordination, inter-agen
linkages, information sharing, brok
ing, monitoring and evaluation,
signed to lead to the development
enhancement of comprehensive a
coordinated community based syste
in, or serving, each community in t
planning and service area. These s
tems shall be designed to assist old
persons in leading independent, mea
ingful and dignified lives in their o
homes and communities as long
possible.

(b) A comprehensive and coordin
ed community based system describ
in paragraph (a) of this section shall

(1) Have a visible focal point of c
tact where anyone can go or call
help, information or referral on a
aging issue;

(2) Provide a range of options:

(3) Assure that these options
readily accessible to all older perso
The independent, semi-dependent a
totally dependent, no matter wh
their income;

(4) Include a commitment of pub
private, voluntary and personal
sources committed to supporting t
system;

(5) Involve collaborative decisi
making among public, private, vol
tary, religious and fraternal organi
tions and older people in the comm
nity;

(6) Offer special help or targett
resources for the most vulnera
older persons, those in danger
losing their independence;

(7) Provide effective referral fr
agency to agency to assure that inf
mation or assistance is received,
matter how or where contact is ma
in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

(9) Have a unique character which is tailored to the specific nature of the community;

(10) Be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Older Americans Act are to be used to finance those activities necessary to achieve elements of a community based system set forth in paragraph (b) of this section. For the purpose of assuring access to information and services for older persons, the area agency shall work with elected community officials in the planning and service area to designate one or more focal points on aging in each community, as appropriate. The area agency shall list designated focal points in the area plan. It shall be the responsibility of the area agency, with the approval of the State agency, to define "community" for the purposes of this section. Since the Older Americans Act defines focal point as a "facility" established to encourage the maximum collocation and coordination of services for older individuals, special consideration shall be given to developing and/or designating multi-purpose senior centers as community focal points on aging. The area agency on aging shall assure that services financed under the Older Americans Act in, or on behalf of, the community will be either based at, linked to or coordinated with the focal points designated. The area agency on aging shall assure access from the designated focal points to services financed under the Older Americans Act. The area agency on aging shall work with, or work to assure that community leadership works with, other applicable agencies and institutions in the community to achieve maximum collocation at, coordination with or access to other services and opportunities for the elderly from the designated community focal points. The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State under § 1321.11.

§ 1321.55 Organization and staffing of the area agency.

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A separate organizational unit within a multi-purpose agency which functions only for purposes of serving as the area agency on aging. Where the State agency on aging designates, as an area agency on aging, a separate organizational unit of a multipurpose agency which has been serving as an area agency, the State agency action shall not be subject to section 305(b)(5)(B) of the Act.

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to perform all of the functions prescribed in this part.

(c) The designated area agency continues to function in that capacity until either:

(1) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency; or

(2) The State agency withdraws the designation of the area agency as provided in § 1321.35.

§ 1321.57 Area agency advisory council.

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. The council shall advise the agency relative to:

(1) Developing and administering the area plan;

(2) Conducting public hearings;

(3) Representing the interest of older persons; and

(4) Reviewing and commenting on all community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:

(1) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part;

(2) Representatives of older persons;

(3) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(4) Representatives of supportive services providers organizations;

(5) Persons with leadership experience in the private and voluntary sectors;

(6) Local elected officials; and

(7) The general public.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

§ 1321.59 Submission of an area plan and plan amendments to the State for approval.

The area agency shall submit the area plan and amendments to the State agency for approval following procedures specified by the State agency in the State policies prescribed by § 1321.11.

§ 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(2) Solicit comments from the public on the needs of older persons;

(3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;

(4) Consult with and support the State's long-term care ombudsman program; and

(5) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with all other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons; and

(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. Such activities may include location of services and specialization in the types of services must needed by these groups to meet this requirement. However, the area agency may not permit a grantee or contractor under this part to employ a means test for services funded under this part.

(d) No requirement in this section shall be deemed to supersede a prohibition contained in the Federal appropriation on the use of Federal funds to lobby the Congress; or the lobbying provision applicable to private nonprofit agencies and organizations contained in OMB Circular A-122.

Subpart D—Service Requirements

§ 1321.63 Purpose of services allotments under Title III.

(a) Title III of the Older Americans Act authorizes the distribution of Federal funds to the State agency on aging by formula for the following categories of services:

(1) Supportive services;

(2) Congregate meals services;

(3) Home delivered meals services;

(4) In-home services;

(5) Ombudsman services;

(6) Special needs services;

(7) Elder abuse services;

(8) Preventive health services; and

(9) Outreach services.

Funds authorized under these categories are for the purpose of assisting the State and its area agencies to develop or enhance for older persons comprehensive and coordinated community based systems as described in § 1321.53(b) throughout the State.

(b) Except for ombudsman services, State agencies on aging will award the funds made available under paragraph (a) of this section to designated area agencies on aging according to the formula determined by the State agency. Except where a waiver is granted by the State agency, area agencies shall award these funds by grant or contract to community services provider agencies and organizations. All funds awarded to area agencies under this part are for the purpose of assisting area agencies to develop or enhance comprehensive and coordinated community based systems for older persons in, or serving, communities throughout the planning and service area.

§ 1321.65 Responsibilities of service providers under area plans.

As a condition for receipt of funds under this part, each area agency on aging shall assure that providers of services shall:

(a) Provide the area agency, in a timely manner, with statistical and other information which the area agency requires in order to meet its planning, coordination, evaluation and reporting requirements established by the State under § 1321.13;

(b) Specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population serviced by the provider;

(c) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.67;

(d) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;

(e) Where feasible and appropriate, make arrangements for the availability of services to older persons in weather related emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

§ 1321.67 Service contributions.

(a) For services rendered with funding under the Older Americans Act, the area agency on aging shall assure that each service provider shall:

(1) Provide each older person with an opportunity to voluntarily contribute to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contributions; and

(3) Establish appropriate procedures to safeguard and account for all contributions.

(b) Each service provider shall use supportive services and nutrition services contributions to expand supportive services and nutrition services respectively. To that end, the State agency shall:

(1) Permit service providers to follow either the addition alternative or the cost sharing alternatives as stated in 45 CFR 92.25(g) (2) and (3); or

(2) A combination of the two alternatives.

(c) Each service provider under the Older Americans Act may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the provider shall consider the income ranges of older persons in the community and the provider's other sources of income. However, means tests may not be used for any service supported with funds under this part. State agencies, in developing State eligibility criteria for in-home services under section 343 of the Act, may not include a means test as an eligibility criterion.

(d) A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

§ 1321.69 Service priority for frail, homebound or isolated elderly.

(a) Persons age 60 or over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services under this part.

(b) The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

§ 1321.71 Legal assistance.

(a) The provisions and restrictions in this section apply only to legal assistance providers and only if they are providing legal assistance under section 307(a)(15) of the Act.

(b) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) The area agency shall award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) shall:

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to provide legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(f) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(g) No provider shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(1) "Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when:

(i) Recovery of damages is not the principal object of the client; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, Supplemental Security Income for Aged, Blind, and Disabled.

(3) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.

(4) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter.

(h) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) No provider or its employees shall contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(2) No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity;

(i) No funds made available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by any nonjudicial Federal, State or local individual or body. Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, Title III regulations or other applicable law. This provision does not authorize publication of lobbying materials or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(4) Making direct contact with the area agency for any purpose;

(5) Providing a client with administrative representation in adjudicatory or rulemaking proceedings or negotiations, directly affecting that client's legal rights in a particular case, claim or application;

(6) Communicating with an elected official for the sole purpose of bringing a client's legal problem to the attention of that official; or

(7) Responding to the request of a public official or body for testimony, legal advice or other statements on legislation or other issues related to aging; provided that no such action will be taken without first obtaining the written approval of the responsible area agency.

(j) While carrying out legal assistance activities and while using resources provided under the Act, no provider or its employees shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation;

(2) Encourage, direct, or coerce others to engage in such activities; or

(3) At any time engage in or encourage others to engage in:

(i) Any illegal activity; or

(ii) Any intentional identification of programs funded under the Act or recipient with any political activity.

(k) None of the funds made available under the Act may be used to pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations unless such dues are not used to engage in activities for which Older Americans Act funds cannot be used directly.

§ 1321.73 Grant related income under Title III-C.

States and sub-grantees must require that their subgrantees' grant related income be used in either the matching or cost sharing alternative in 45 CFR 92.25(g)(2) or the additive alternative in § 92.25(g)(3) or a combination of the two. The deductive alternative described in § 92.25(g)(1) is not permitted.

§ 1321.75 Licenses and safety.

The State shall ensure:

(a) That, in making awards for multipurpose senior center activities, the area agency will ensure that the facility complies with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes; and

(b) The technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

Subpart E—Hearing Procedures for Stawte Agencies

§ 1321.77 Scope.

(a) Hearing procedures for State plan disapproval, as provided for in section 307(c) and section 307(d) of the Act are subject to the previsions of 45 CFR Part 213 with the following exceptions:

(1) Section 213.1(a); § 213.32(d); and § 213.33 do not apply.

(2) Reference to SRS Hearing Clerk shall be read to mean HHS Hearing Clerk.

(3) References to Administrator shall be read to mean Commissioner on Aging.

(b) Instead of the scope described in § 213.1(a), this subpart governs the procedures and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment;

(2) Determination that a State agency does not meet the requirements of this part;

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements, including failure to comply with any assurance required under the Act or under this part.

§ 1321.79 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.81 How the State may appeal.

A State may appeal the final decision of the Commissioner disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State shall file the appeal within 30 days of the Commissioner's final decision.

§ 1321.83 How the Commissioner may reallot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-federal share requirements.

PART 1326—GRANTS TO INDIAN TRIBES FOR SUPPORT AND NUTRITION SERVICES

Sec.
1326.1 Basis and purpose of this part.
1326.3 Definitions.
1326.5 Applicability of other regulations.
1326.7 Confidentiality and disclosure of information.
1326.9 Contributions.
1326.11 Prohibition against supplantation.
1326.13 Supportive services.
1326.15 Nutrition services.
1326.17 Access to information.
1326.19 Application requirements.
1326.21 Application approval.
1326.23 Hearing procedures.

AUTHORITY: 42 U.S.C. 3001; Title VI, Part A of the Older Americans Act.

SOURCE: 53 FR 33774, Aug. 31, 1988, unless otherwise noted.

§ 1326.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of American Indian elders on Indian reservations. This part implements Title VI (Part A) of the Older Americans Act, as amended, by establishing the requirements that an Indian tribal organization shall meet in order to receive a grant to promote the delivery of services for older Indians that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

§ 1326.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1326.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Indian reservation," means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (84 Stat. 688).

"Indian tribe," means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

"Means test," as used in the provision of services, means the use of an older Indian's income or resources to deny or limit that person's receipt of services under this part.

"Older Indians," means those individuals who have attained the minimum age determined by the tribe for services.

"Project period," as used in § 1326.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1326.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the tribal organization provides supportive and nutritional services to older Indians residing there. A service area may include all or part of the reservation or any portion of a county or counties which has a common boundary with the reservation. A service area may also include a non-contiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization.

"Service provider," means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

"Tribal organization," as used in § 1326.7 and elsewhere in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite to the letting or making of the contract or grant (25 U.S.C. 450b).

§ 1326.5 Applicability of other regulations.

The following regulations in Title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16—Procedures of the Departmental Grant Appeals Board;

(b) Part 74—Administration of Grants;

(c) Part 75—Informal Grant Appeals Procedures;

(d) Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(e) Part 81—Practice and Procedure for Hearings under Part 80 of this Title;

(f) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation; and

(g) Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

§ 1326.7 Confidentiality and disclosure of information.

A tribal organization shall have confidentiality and disclosure procedures as follows:

(a) A tribal organization shall have procedures to ensure that no information about an older Indian or obtained from an older Indian by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1326.9 Contributions.

(a) Each tribal organization shall:

(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Indian with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all services contributions to expand comprehensive and coordinated services systems supported under this part, while using nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the tribal organization shall consider the income ranges of older Indians in the service area and the tribal organization's other sources of income. However, means tests may not be used.

(c) A tribal organization that receives funds under this part may not deny any older Indian a service because the older Indian will not or cannot contribute to the cost of the service.

§ 1326.11 Prohibition against supplantation.

A tribal organization shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1326.13 Supportive services.

(a) A tribal organization may provide any of the supportive services mentioned under Title III of the Older Americans Act, and any other supportive services that are necessary for the general welfare of older Indians.

(b) If an applicant elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The tribal organization shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The tribal organization shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior centers assisted under this part. The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If an applicant elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1326.15 Nutrition services.

(a) In addition to providing nutrition services to older Indians, a tribal organization may:

(1) Provide nutrition services to the spouses of older Indians;

(2) Provide nutrition services to nonelderly handicapped or disabled Indians who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Indians, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a noninstitutional household with and accompany a person eligible for congregate meals under that part.

(b) Each tribal organization may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the tribal organization shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the tribal organization shall work with agencies responsible for administering other programs to facilitate participation of older Indians.

§ 1326.17 Access to information.

A tribal organization shall:

(a) Establish or have a list of all services that are available to older Indians in the service area,

(b) Maintain a list of services needed or requested by the older Indians: and

(c) Provide assistance to older Indians to help them take advantage of available services.

§ 1326.19 Application requirements.

A tribal organization shall have an approved application. The application shall be submitted as prescribed in section 604 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 604(a)(5) of the Act, and any objectives established by the Commissioner.

(b) A description of the geographic boundaries of the service area proposed by the tribal organization:

(c) Documentation of the ability of the tribal organization to deliver supportive and nutrition services to older Indians, or documentation that the tribal organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under Title III of the Act.

(e) A tribal resolution(s) authorizing the tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the tribe.

§ 1326.21 Application approval.

(a) Approval of any application under section 604(e) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuaton, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to grantees which have effectively administered such grants in the prior year.

§ 1326.23 Hearing procedures.

In meeting the requirements of section 604(d)(3) of the Act, if the Commissioner disapproves an application from an eligible tribal organization the tribal organization may file a written request for a hearing with th Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice If it requests a hearing, the tribal organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval including the pertinent facts and reasons in support of its response, and any and all documentation to suppor its position. Service of the reques shall also be made on the individual(s designated by the Commissioner t represent him or her.

(b) The Administration on Aging shall have the opportunity to respond with 30 days to the merits of the tribal organization's request.

(c) The Commissioner notifies the tribal organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the tribal organization to

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense t the Administration on Aging;

(3) Present written evidence prior t and at the hearing, and present ora evidence at the hearing if the Commissioner or designated official decide that oral evidence is necessary for th proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or hav a deposition from the staff, whicheve the Commissioner or designated official decides.

(e) The Commissioner or designated official conducts a fair and impartia hearing, takes all necessary action t avoid delay and to maintain order and has all powers necessary to these ends

(f) Formal rules of evidence do no apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissoner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

PART 1328—GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER HAWAIIAN NATIVES

Sec.
1328.1 Basis and purpose of this part.
1328.3 Definitions.
1328.5 Applicability of their regulations.
1328.7 Confidentiality and disclosure of information.
1328.9 Contributions.
1328.11 Prohibition against supplantation.
1328.13 Supportive services.
1328.15 Nutrition services.
1328.17 Access to information.
1328.19 Application requirements.
1328.21 Application approval.
1328.23 Hearing procedures.

AUTHORITY: 42 U.S.C. 3001; Title VI Part B of the Older Americans Act.

SOURCE: 53 FR 33777, Aug. 31, 1988, unless otherwise noted.

§ 1328.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of Older Hawaiian Natives. This part implements Title VI (Part B) of the Older Americans Act, as amended, by establishing the requirements that a public or nonprofit private organization shall meet in order to receive a grant to promote the delivery of services for older Hawaiian Natives that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these agrants.

§ 1328.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease of 10 years or more for use as a multipurpose senior center.

"Act," means the Older Americans Act of 1965, as amended.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1328.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modificaitons to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Eligible organization," means a public or nonprofit private organization having the capacity to provide services under this part for older Hawaiian Natives.

"Grantee," as used in this part, means an eligible organization that has received funds to provide services to older Hawaiians.

"Hawaiian Native," as used in this part, means any individual any of whose ancestors were native of the area which consists of the Hawaiian Islands prior to 1778.

"Means test," as used in the provision of services, means the use of an older Hawaiian Native's income or resources to deny or limit that person receipt of services under this part.

"Older Hawaiian," means any individual, age 60 or over, who is an Hawaiian Native.

"Project period," as used in § 1328.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1328.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the grantee provides supportive and nutritional services to older Hawaiian Natives residing there.

§ 1328.5 Applicability of other regulations.

The following regulations in Title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16-Procedures of the Departmental Grant Appeals Board;

(b) Part 74-Administration of Grants;

(c) Part 75-Informal Grant Appeals Procedures;

(d) Part 80-Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(e) Part 81-Practice and procedures for hearings under Part 80;

(f) Part 84-Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financing Participation; and

(g) Part 91-Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

§ 1328.7 Confidentiality and disclosure of information.

A grantee shall have confidentiality and disclosure procedures as follows:

(a) The grantee shall have procedures to ensure that no information about an older Hawaiian Native or obtained from an older Hawaiian Native is disclosed in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal monitoring agencies.

(b) A grantee is n
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documents that are
closure by a Federa
Federal Freedom o
5 U.S.C 552.

§ 1328.9 Contribution

(a) Each grantee s

(1) Provide eacl
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(2) Protect the pr
Hawaiian Native wi
her contribution;

(3) Establish app
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tributions;

(4) Use all suppor
butions to expand
ed under this part;

(5) Use all nutri
butions only to exp
vided under sectio
the Act.

(b) Each grantee
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grantee shall co
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other sources of
means tests may n

(c) A grantee
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§ 1328.11 Prohibiti
tion.

A grantee shall
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ties provided wit
ance.

§ 1328.13 Supporti

(a) A grantee m
supportive servi
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proved in the
that are necessar
fare of older Haw

(b) If a grantee elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The grantee shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The grantee shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The grantee shall assure technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If a grantee elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1328.15 Nutrition services.

(a) In addition to providing nutrition services to older Hawaiian Natives, a grantee may:

(1) Provide nutrition services to the spouses of older Hawaiian Natives;

(2) Provide nutrition services to nonelderly handicapped or disabled Hawaiian Natives who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Hawaiian Natives, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a noninstitutional household with and accompany a person eligible for congregate meals under that part.

(b) Each grantee may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the grantee shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the grantee shall work with agencies responsible for administering other programs to facilitate participation of older Hawaiian Natives.

§ 1328.17 Access to information.

A grantee shall:

(a) Establish or have a list of all services that are available to older Hawaiian Natives in the service area;

(b) Maintain a list of services needed or requested by the older Hawaiians; and

(c) Provide assistance to older Hawaiian Natives to help them take advantage of available services.

§ 1328.19 Application requirements.

To receive funds under this part, an eligible organization shall submit an application as prescribed in section 623 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 623(a)(6) of the Act, and any objectives established by the Commissioner;

(b) A description of the geographic boundaries of the service area proposed by the eligible organization;

(c) Documentation of the organization's ability to serve older Hawaiian Natives;

(d) Assurances as prescribed by the Commissioner that:

(1) The eligible organization represents at least 50 older Hawaiian Natives who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities on behalf of older Hawaiian natives in close coordination with the State agency and Area Agency on Aging;

(3) The eligible organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in §§ 1328.7 through 1328.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under Title III of the Act.

(e) Signature by the principal official of the eligible organization.

§ 1328.21 Application approval.

(a) Approval of any application under section 623(d) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to eligible applicant organizations that have prior experience in serving Hawaiian Natives, particularly older Hawaiian Natives.

§ 1328.23 Hearing procedures.

In accordance with section 623(c)(3) of the Act, if the Commissioner disapproves an application from an eligible organization, the organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond within 30 days to the merits of the organization's request.

(c) The Commissioner notif
organization in writing of th
time and place for the hearing.

(d) The hearing procedures
the right of the organization to

(1) A hearing before the C
sioner or an official designated
Commissioner;

(2) Be heard in person or to
resented by counsel, at no exp
the Administration on Aging;

(3) Present written evidence
and at the hearing, and prese
evidence at the hearing if the C
sioner or the Commissioner's d
decides that oral evidence is ne
for the proper resolution of th
involved, and

(4) Have the staff directly r
ble for reviewing the app
either present at the hearing,
a deposition from the staff, wh
the Commissioner or the Comr
er's designee decides.

(e) The Commissioner or th
missioner's designee conducts
and impartial hearing, takes al
sary action to avoid delay and t
tain order and has all powers
sary to these ends.

(f) Formal rules of evidence
apply to the hearings.

(g) The official hearing tr
together with all papers doc
exhibits, and requests filed in
ceedings, including rulings, cor
the record for decision.

(h) After consideration
record, the Commissioner or th
missioner's designee issues a
decision, based on the record
sets forth the reasons for the
and the evidence on which
based. The decision is issued w
days of the date of the hearing
tutes the final administrative
on the matter and is promptly
to the organization.

(i) Either the organization
staff of the Administration o
may request, for good cause, a
sion of any of the time limits s
in this section.

SUBCHAPTER D—THE ADMINISTRATION FOR NATIVE AMERICANS, NATIVE AMERICAN PROGRAMS

PART 1336—NATIVE AMERICAN PROGRAMS

Subpart A—Definitions

Sec.
1336.10 Definitions.

Subpart B—Purpose of the Native American Programs

1336.20 Program purpose.

Subpart C—Native American Projects

1336.30 Eligibility.
1336.31 Project approval procedures.
1336.32 Grants.

Subpart D—Evaluation

1336.40 General.

Subpart E—Financial Assistance Provisions

1336.50 Financial and administrative requirements.
1336.51 Project period.
1336.52 Appeals.

Subpart F—Native Hawaiian Revolving Loan Fund Demonstration Project

1336.60 Purpose of this subpart.
1336.61 Purpose of the Revolving Loan Fund.
1336.62 Definitions.
1336.63 General responsibilities of the Loan Administrator.
1336.64 Development of goals and strategies: Responsibilities of the Loan Administrator.
1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.
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1336.71 Administrative costs.
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Sec.
1336.75 Allowable loan activities.
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1336.77 Recovery of funds.

AUTHORITY: 42 U.S.C. 2991, et seq.

SOURCE: 48 FR 55821, Dec. 15, 1983, unless otherwise noted.

Subpart A—Definitions

§ 1336.10 Definitions.

For the purposes of this part, unless the context otherwise requires:

Act means the Native American Programs Act of 1974, as amended (42 U.S.C. 2991 et seq.).

Alaskan Native means a person who is an Alaskan Indian, Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native Village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native Village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

American Indian or Indian means any individual who is a member or a descendant of a member of a North American tribe, band, Pueblo or other organized group of native people who are indigenous to the Continental United States, or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian tribe, group, band, or community of which he or she claims to be a member.

ANA means the Administration for Native Americans within the Office of Human Development Services.

Applicant means an organization which has applied for financial assistance from ANA.

Budget period means the interval of time into which a project period is divided for budgetary and funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Economic and social self-sufficiency means the ability of Native Americans to define and achieve their own economic and social goals.

Indian tribe means a distinct political community of Indians which exercises powers of self-government.

Native American means American Indian, Indian, Native Hawaiian, and Alaskan Native, as defined in the Act, or in this section.

Project period means, for discretionary grants and cooperative agreements, the total time for which the recipient's project or program is approved for support, including any extension, subject to the availability of funds, satisfactory progress, and a determination by HHS that continued funding is in the best interest of the Government.

Recipient means an organization which has applied for financial assistance, and to which financial assistance is awarded under this Act. The term includes grantees and recipients of cooperative agreements.

Subpart B—Purpose of the Native American Programs

§ 1336.20 Program purpose.

The purpose of the Native American Programs authorized by the Native American Programs Act of 1974 is to promote the goal of economic and social self-sufficiency for Native Americans.

Subpart C—Native American Projects

§ 1336.30 Eligibility.

(a) Financial assistance under section 803 may be made to public and private nonprofit agencies, including, but not limited to, governing bodies of Indian tribes on Federal and State reservations; Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act and other Acts; public and nonprofit private agencies serving Native Hawaiians; and Indian organizations in urban or rural nonreservation areas.

(b) Financial assistance under
tions 804 and 805 may be made
public or private agencies includ
"for-profit" organizations.

(c) Financial assistance under
tion 803 may be made to public
nonprofit private agencies serv
native peoples from American Sam
Guam and the Northern Mariana
lands subject to the availability
funds.

[48 FR 55821, Dec. 15, 1983, as amende
53 FR 23968, June 24, 1988; 53 FR 28
July 27, 1988]

§ 1336.31 Project approval procedures.

(a) Each applicant for financial
sistance under section 803 of the
must submit a work plan that f
within the statutory requirements
the Act and meets the criteria of p
gram announcements published
ANA in the FEDERAL REGISTER. If
proposed project extends beyond
year, a work plan must be submit
for the period of time specified by
Commissioner in the Program
nouncement. ANA will determ
whether to approve all, part, or n
of the requested work plan. Propo
changes to the approved work p
must receive the written approval
ANA prior to implementation by
recipient.

(b) ANA will negotiate the appro
project goals, objectives, work pl
and the funding level for each bud
period with each recipient.

(c) The evaluation for the purp
of making an approval decision
each proposed work plan will take i
account the proposal's conforma
with ANA program purposes and
recipient's past performance and
complishments.

(d) Financial assistance awar
under section 803 may be renewed
ANA to grantees based on accepta
work plans and past performance.

(Approved by the Office of Managem
and Budget under control number 0
0016)

§ 1336.32 Grants.

Generally, financial assistance
be made available for a one-y
budget period and subsequent n
competing continuation awards w

the same project period will also be for one year. A recipient must submit a separate application to have financial assistance continued for each subsequent year, with the same project period, but the continuation application need only contain budget and a summary progress report.

Subpart D—Evaluation

§ 1336.40 General.

Progress reports and continuation applications must contain sufficient information for ANA to determine the extent to which the recipient meets ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the approved work plan and with ANA project evaluation criteria.

(Approved by the Office of Management and Budget under control numbers 0980-0155 and 0980-0144)

Subpart E—Financial Assistance Provisions

§ 1336.50 Financial and administrative requirements.

(a) *General.* The following HHS regulations apply to all grants awarded under this part:

45 CFR Part 16 Department grant appeals process.

45 CFR Part 46 Protection of human subjects.

45 CFR Part 74 Administration of grants.

45 CFR Part 75 Informal grant appeals procedures (indirect cost rates and other cost allocations).

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.

45 CFR Part 81 Practice and procedure for hearing under Part 80.

45 CFR Part 84 Nondiscrimination on the basis of handicap in federally assisted programs.

45 CFR Part 86 Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91 Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from HHS.

(b) *Cost sharing or matching*—(1) *Policy.* Recipients of financial assistance under sections 803, 804, and 805 of the Act are required to provide a matching share of 20 percent of the approved cost of the assisted project.

This requirement may be waived in accordance with the criteria in § 1336.50(b)(3). The matching share requirement may be met using either cash or in-kind contributions.

(2) *Application.* If an applicant wishes to request a waiver of the requirement for a 20 percent non-Federal matching share, it must include with is application for funding a written justification that clearly explains why the applicant cannot provide the matching share and how it meets the criteria.

(3) *Criteria.* Both of the following criterial must be met for an applicant to be eligible for a waiver of the non-Federal matching requirement:

(i) Applicant lacks the available resources to meet part or all of the non-Federal matching requirement. This must be documented by an institutional audit if available, or a full disclosure of applicant's total assets and liabilities.

(ii) Applicant can document that reasonable efforts to obtain cash or inkind contributions for the purposes of the project from third parties have been unsuccessful. Evidence of such efforts can include letters from possible sources of funding indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request.

(4) *Approval.* For a waiver to be approved, ANA must determine that it will not prevent the award of other grants at levels it believes are desirable for the purposes of the program. Waiver of all or part of the non-Federal share shall apply only to the budget

period for which application was made.

(c) *Maintenance of effort.* (1) Applications for financial assistance under this Part must include either a statement of compliance with the maintenance of effort requirement contained in section 803(c) of the Act, or a request for a waiver, in accordance with criteria established in this paragraph.

(2) To be eligible for a waiver of the maintenance of effort requirement, the applicant must demonstrate to ANA that the organization whose funds previously supported the project discontinued its support:

(i) As a result of funding limitations; and

(ii) Not as a result of an adverse evaluation of the project's purpose or the manner in which it was conducted; and

(iii) Not because it was anticipated that Federal funds would replace the original source of project funding.

(3) In addition, the applicant must demonstrate in the request for a waiver that the maintenance of effort requirement would result in insurmountable hardship for the recipient or would otherwise be inconsistent with the purposes of this Part.

(d) *Delegation of project operations.* (1) Each subgrant awarded to a delegate agency must have specific prior approval by ANA. Such delegation must be formalized by written agreement.

(2) The agreement must specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. The applicant must submit a budget for each delegate agency as part of its application.

(e) *Unallowable costs.* ANA funds may not be used by recipients to purchase real property.

(f) *Office of the Chief Executive.* The costs of salaries and expenses of the Office of Chief Executive of a federally recognized Indian tribal government (as defined in §74.3 of this title) are allowable, provided that such costs exclude any portion of salaries and expenses of the Office of Chief Executive that are a cost of general government and provided they are related
a project assisted under this part.

§1336.51 Project period.

The Notice of Financial Assistar
Awarded will specify the period
which support is intended, althou
the Department makes funding co
mitments only for one budget peri
at a time. Financial assistance unc
section 803 of the Act may be ongoi
subject to policy decisions and fundi
limitations.

§1336.52 Appeals.

(a) *Right to appeal.* Recipier
whose financial assistance has be
suspended or terminated, or who
non-competing continuation appli
tions for refunding have been deni
may appeal such decisions using t
procedures described in this secti
Denial of an application for refundi
means the refusal to fund a non-co
peting continuation application for
budget period within a previously
proved project period.

(b) *Suspension, termination, a
denial of funding.* Procedures for a
definitions of suspension and termi
tion of financial assistance are pu
lished in 45 CFR 74.110-74.116.
peals from a denial of refunding
be treated the same procedurally
appeals to termination of financial
sistance. The term "denial of refu
ing" does not include policy decisio
to eliminate one or more activities
an approved project. A decision not
fund an application at the end of t
recipients's project period is not
"denial of refunding" and is not su
ject to appeal.

(c) *Hearings.* (1) A recipient shall
given an initial written notice at le
thirty (30) days prior to the susp
sion or termination of financial assi
ance except in emergency situatio
which occur when Federal property
in imminent danger of dissipation,
when life, health, or safety is end
gered. During this period of time, t
recipient has the opportunity to sh
cause to ANA why such action shou
not be taken.

(2) A recipient who has recei
final written notice of termination
denial of refunding, or whose financ

assistance will be suspended for more than 30 days, or who has other appealable disputes with ANA as provided by 45 CFR Part 16 may request review by the Departmental Grant Appeals Board under the provisions of 45 CFR Part 16.

(3) If a recipient appeals a suspension of more than 30 days which subsequently results in termination of financial assistance, both actions may be considered simultaneously by the Departmental Grant Appeals Board

Subpart F—Native Hawaiian Revolving Loan Fund Demonstration Project

AUTHORITY: 88 Stat. 2324, 101 Stat. 976 (42 U.S.C. 2991, et seq.).

SOURCE: 53 FR 23969, June 24, 1988 and 53 FR 28223, July 27, 1988, unless otherwise noted.

§ 1336.60 Purpose of this subpart.

(a) The Administration for Native Americans will award a five-year demonstration grant to one agency of the State of Hawaii or to one community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians to develop procedures for and to manage a revolving loan fund for Native Hawaiian individuals and organizations in the State of Hawaii. (Section 830A(a)(1))

(b) This subpart sets forth the requirements that the organization or agency selected to administer the revolving loan fund must meet and the terms and conditions applicable to loans made to borrowers from the loan fund.

§ 1336.61 Purpose of the Revolving Loan Fund.

The purpose of the Native Hawaiian Revolving Loan Fund is to provide funding not available from other sources on reasonable terms and conditions to:

(a) Promote economic activities which result in expanded opportunities for Native Hawaiians to increase their ownership of, employment in, or income from local economic enterprise;

(b) Assist Native Hawaiians to overcome specific gaps in local capital markets and to encourage greater private-sector participation in local economic development activities; and

(c) Increase capital formation and private-sector jobs for Native Hawaiians. (Section 803A(a)(1)(A))

§ 1336.62 Definitions.

Applicant means an applicant for a loan from the Native Hawaiian Revolving Loan Fund. An applicant must be an individual Native Hawaiian or a Native Hawaiian organization. If the applicant is a group of people organized for economic development purposes, the applicant ownership must be 100% Native Hawaiian.

Commissioner means the Commissioner of the Administration for Native Americans.

Cooperative association means an association of individuals organized pursuant to State or Federal law, for the purpose of owning and operating an economic enterprise for profit, with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized pursuant to State or Federal law, as a corporation, with or without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to make scheduled payments on a loan, failure to obtain the lender's approval for disposal of assets mortgaged as security for a loan, or failure to comply with the convenants, obligations or other provisions of a loan agreement.

Economic enterprise means any Native Hawaiian-owned, commercial, industrial, agricultural or other business activity established or organized for the purpose of profit.

Financing statement means the document filed or recorded in country or State offices pursuant to the provisions of the Uniform Commercial Code as enacted by Hawaii notifying third parties that a lender has a lien on the chattel and/or crops of a borrower.

Loan Administrator means either the agency of the State of Hawaii or the community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians selected to administer the revolving loan fund.

Mortgages mean mortgages and deeds of trust evidencing an encumbrance of trust or restricted land, mortgages and security agreements executed as evidence of liens against crops and chattels, and mortgages and deeds of trust evidencing a lien on leasehold interests.

Native Hawaiian means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Partnership means two or more persons engaged in the same business, sharing its profits and risks, and organized pursuant to state or Federal law.

Profits mean the net income earned after deducting operating expenses from operating revenues.

Revolving Loan Fund (RLF) means all funds that are now or are hereafter a part of the Native Hawaiian Revolving Loan Fund authorized by the Native American Programs Act of 1974, as amended in 1987, and supplemented by sums collected in repayment of loans made, including interest or other charges on loans and any funds appropriated pursuant to Section 803A of the Native American Programs Act of 1974, as amended.

§ 1336.63 General responsibilities of the Loan Administrator.

(a) The Loan Administrator will make loans to Native Hawaiian organizations and to individual Native Hawaiians for the purpose or promoting economic development among Native Hawaiians in the State of Hawaii. (Section 803(a)(1)(A).)

(b) Prior to any loan being made from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval of the following organizational and administrative materials necessary to implement the RLF:

(1) Goals and strategies;

(2) Staffing and organizational responsibilities;

(3) Preapplication and loan screening processes;

(4) Loan procedures including application forms;

(5) Criteria and procedures for lo
review, evaluation and decisio
making;

(6) Loan closing procedures; and

(7) Procedures for loan servicin
monitoring and provision of technic
assistance.

(c) The Loan Administrator will
up fiscal management procedures
satisfy the requirements of secti
803A of the Native American P
grams Act and this subpart.

(d) The Loan Administrator must
up a separate account for the R
into which all payments, intere
charges, and other amounts collect
from loans made from the RLF will
deposited.

§ 1336.64 Development of goals and stra gies: Responsibilities of the Loan ministrator.

(a) Prior to the approval of a
direct loan under the RLF, the Lo
Administrator will develop and obta
the Commissioner's approval for
clear and comprehensive set of go
and strategies for the RLF. The go
will specify the results the Loan
ministrator expects to accompl
from the Revolving Loan Fund, defi
the RLF's role and responsibilities
potential users, and serve as the ba
for the development of an organi
tional strategy and operating pl
The RLF strategies will provide t
Loan Administrator with a sound
derstanding of the economic a
market conditions within the Nat
Hawaiian community.

(b) The following factors shall
considered by the Loan Administra
in developing the RLF's goals:

(1) Employment needs of the lo
population;

(2) Characteristics of the local e
nomic base;

(3) Characteristics of the local c
ital base and the gaps in the lo
availability of business capital;

(4) Local resources for economic
velopment and their availability; an

(5) Goals and strategies of ot
local organizations involved in e
nomic development.

(c) The loan fund strategies de
oped by the Revolving Loan Fu
must include the following:

(1) *Business Targeting Strategy:* to determine which types of businesses are to be targeted by the loan fund. The Loan Administrator will develop procedures to ensure that the loans made are directed to Native Hawaiians.

(2) *Financing Strategy:* to determine the types of financing the loan fund will provide;

(3) *Business Assistance Strategy:* to identify the possible or potential management problems of a borrower and develop a workable plan for providing borrowers with the needed management assistance;

(4) *Marketing Strategy:* to generate applications from potential borrowers and to generate the support and participation of local financial institutions;

(5) *Capital Base Management Strategy:* to develop and allocate the financial resources of the fund in the most effective possible way to meet the need or demand for financing; and

(6) *Accountability Strategy:* to develop policies and mechanisms to hold borrowers accountable for providing the public benefits promised (e.g. jobs) in return for financing; to ensure that, until expenditure, loan proceeds are held by the borrower in secured, liquid financial instruments; to hold borrowers accountable for upholding the commitments made prior to the loan; and to develop the methods used by the RLF to enforce these commitments.

§ 1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the RLF's organization table, including:

(a) The structure and composition of the Board of Directors of the RLF;

(b) The staffing requirements for the RLF, with position descriptions and necessary personnel qualifications;

(c) The appointments to the advisory loan review committee; and

(d) The roles and responsibilities of the Board, staff and loan review committee.

§ 1336.66 Procedures and criteria for administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the following procedures:

(a) *Preapplication and loan screening procedures.* Some factors to be considered in the loan screening process are:

(1) General eligibility criteria;

(2) Potential economic development criteria;

(3) Indication of business viability;

(4) The need for RLF financing; and

(5) The ability to properly utilize financing.

(b) *Application process.* The application package includes forms, instructions, and policies and procedures for the loan application. The package must also include instructions for the development of a business and marketing plan and a financing proposal from the applicant.

(c) *Loan evaluation criteria and procedures.* The loan evaluation must include the following topics:

(1) General and specific business trends;

(2) Potential market for the product or service;

(3) Marketing strategy;

(4) Management skills of the borrower;

(5) Operational plan of the borrower;

(6) Financial controls and accounting systems;

(7) Financial projections; and

(8) Structure of investment and financing package.

(d) *Loan decision-making process.* Decision-making on a loan application includes the recommendations of the staff, the review by the loan review committee and the decision by the Board.

(e) *Loan closing process.* The guidelines for the loan closing process include the finalization of loan terms; conditions and covenants; the exercise of reasonable and proper care to ensure adherence of the proposed loan and borrower's operations to legal requirements; and the assurance that any requirement for outside financing or other actions on which disbursement is contingent are met by the borrower.

(f) *Loan closing documents.* Documents used in the loan closing process include:

(1) *Term Sheet:* an outline of items to be included in the loan agreement. It should cover the following elements:

(i) Loan terms;

(ii) Security interest;

(iii) Conditions for closing the loan;

(iv) Covenants, including reporting requirements;

(v) Representations and warranties;

(vi) Defaults and remedies; and

(vii) Other provisions as necessary.

(2) *Closing Agenda:* an outline of the loan documents, the background documents, and the legal and other supporting documents required in connection with the loan.

(g) *Loan servicing and monitoring.* The servicing of a loan will include collections, monitoring, and maintenance of an up-to-date information system on loan status.

(1) *Collections:* To include a repayment schedule, invoice for each loan payment, late notices, provisions for late charges.

(2) *Loan Monitoring:* To include regular reporting requirements, periodic analysis of corporate and industry information, scheduled telephone contact and site visits, regular loan review committee oversight of loan status, and systematic internal reports and files.

§ 1336.67 Security and collateral: Responsibilities of the Loan Administrator.

The Loan Administrator may require any applicant for a loan from the RLF to provide such collateral as the Loan Administrator determines to be necessary to secure the loan. (Section 803A(b)(3))

(a) *As a Credit Factor.* The availability of collateral security normally is considered an important factor in making loans. The types and amount of collateral security required should be governed by the relative strengths and weaknesses of other credit factors. The taking of collateral as security should be considered with respect to each loan. Collateral security sh
be sufficient to provide the lender
sonable protection from loss in
case of adversity, but such securit
lack thereof should not be used as
primary basis for deciding wheth
extend credit.

(b) *Security Interests.* Security i
ests which may be taken by the le
include, but are not limited to, lien
real or personal property, inclu
leasehold interests; assignments
income and accounts receivable;
liens on inventory or proceeds o
ventory sales as well as marketabl
curities and cash collateral accoun

(1) *Motor vehicles.* Liens ordin
should be taken on licensed moto
hicles, boats or aircraft purch
hereunder in order to be able to t
fer title easily should the lender
to declare a default or repossess
property.

(2) *Insurance on property sec*
Hazard insurance up to the amou
the loan or the replacement valu
the property secured (whicheve
less) must be taken naming the le
as beneficiary. Such insurance
cludes fire and extended cover
public liability, property damage,
other appropriate types of hazar
surance.

(3) *Appraisals.* Real property ser
as collateral security must be
praised by a qualified appraiser.
all other types of property, a valua
shall be made using any recogn
standard technique (including st
ard reference manuals), and this
ation shall be described in the
file.

(c) *Additional security.* The le
may require collateral security or a
tional security at any time during
term of the loan if after review
monitoring an assessment indic
the need for such security.

§ 1336.68 Defaults, uncollectible loans uidations: Responsibilities of the Administrator.

(a) Prior to making loans from
RLF, the Loan Administrator will
velop and obtain the Commission
approval for written procedures
definitions pertaining to defaults

collections of payments. (Section 803A(b)(4))

(b) The Loan Administrator will provide a copy of such procedures and definitions to each applicant for a loan at the time the application is made. (Section 803A(b)(4))

(c) The Loan Administrator will report to the Commissioner whenever a loan recipient is 90 days in arrears in the repayment of principal or interest or has failed to comply with the terms of the loan agreement. After making reasonable efforts to collect amounts payable, as specified in the written procedures, the Loan Administrator shall notify the Commissioner whenever a loan is uncollectible at reasonable cost. The notice shall include recommendations for future action to be taken by the Loan Administrator. (Section 803A(c) (1) and (2))

(d) Upon receiving such notices, the Commissioner will, as appropriate, instruct the Loan Administrator:

(1) To demand the immediate and full repayment of the loan;

(2) To continue with its collection activities;

(3) To cancel, adjust, compromise, or reduce the amount of such loan;

(4) To modify any term or condition of such loan, including any term or condition relating to the rate of interest or the time of payment of any installment of principal or interest, or portion thereof, that is payable under such loan;

(5) To discontinue any further advance of funds contemplated by the loan agreement;

(6) To take possession of any or all collateral given as security and in the case of individuals, corporations, partnerships or cooperative associations, the property purchased with the borrowed funds;

(7) To prosecute legal action against the borrower or against the officers of the borrowing organization;

(8) To prevent further disbursement of credit funds under the control of the borrower;

(9) To assign or sell at a public or private sale, or otherwise dispose of for cash or credit any evidence of debt, contract, claim, personal or real property or security assigned to or held by the Loan Administrator; or

(10) To liquidate or arrange for the operation of economic enterprises financed with the revolving loan until the indebtedness is paid or until the Loan Administrator has received acceptable assurance of its repayment and compliance with the terms of the loan agreement. (Section 803A(c)(2)(B))

§ 1336.69 Reporting requirements: Responsibilities of the Loan Administrator.

(a) The Loan Administrator will maintain the following internal information and records:

(1) For each borrower: The loan repayment schedule, log of telephone calls and site visits made with the date and the items discussed, correspondence with the borrower, progress reports and analyses.

(2) Monthly status of all outstanding loans, noting all overdue payments.

(3) Monthly status of the investments of the revolving loan fund monies not currently used for loans.

(4) Monthly records on the revenue generated by the loan fund from interest charges and late charges.

(5) Monthly administrative costs of the management of the loan fund and the sources of the monies to support the administrative costs.

(b) The Loan Administrator must submit a quarterly report to the Commissioner. The report may be in a format of the choice of the Loan Administrator as long as it includes at a minimum the following topics:

(1) For each borrower:

(i) Name of the borrower;

(ii) Economic development purpose(s) of the loan;

(iii) Financing of the loan by source;

(iv) Loan status (current/delinquent/paid);

(v) Principal and interest outstanding; and

(vi) Amount delinquent/defaulted, if any.

(2) Financial status of the RLF:

(i) Administrative cost expenditures;

(ii) Level of base capital;

(iii) Level of current capital;

(iv) Amount of ANA funding;

(v) Matching share;

(vi) Other direct funding of the RLF;

(vii) Program income, including interest on loans, earnings from investments, fee charges;

(viii) Loans made;

(ix) Losses on loans;

(x) Principal and interest outstanding;

(xi) Loans repaid;

(xii) Delinquent loans; and

(xiii) Collateral position of the RLF (the value of collateral as a percent of the outstanding balance on direct loans).

(c) The Loan Administrator must submit a semi-annual report to the Commissioner containing an analysis of the RLF progress to date.

(d) The Loan Administrator must submit to the Department a quarterly SF-269, Financial Status Report, or any equivalent report required by the Department.

§ 1336.70 Technical assistance: Responsibilities of the Loan Administrator.

The Loan Administrator will assure that competent management and technical assistance is available to the borrower consistent with the borrower's knowledge and experience and the nature and complexity of the economic enterprise being financed by the RLF. Consultants, RLF staff, and members of the loan review committee and Board may be used to assist borrowers. (Section 803A(d)(1)(B))

§ 1336.71 Administrative costs.

Reasonable administrative costs of the RLF may be paid out of the loan fund. The grant award agreement between the Loan Administrator and ANA will set forth the allowable administrative costs of the loan fund during the five-year demonstration period. (Sections 803A(a)(2) and 803A(d)(1)(A))

§ 1336.72 Fiscal requirements.

(a) Any portion of the revolving loan fund that is not required for expenditure must be invested in obligations of the United States or in obligations guaranteed or insured by the United States.

(b) Loans made under the RLF will be for a term that does not exceed five years.

(c) No loan may be made by the
after November 29, 1992, the cl
the five-year period of the demo
tion project. (Section 803A(b)(6))

(d) All monies that are in the r
ing loan fund on November 29,
and that are not otherwise need
determined by the Commission
carry out the provisions of thi
part must be deposited in the
ury of the United States as misce
ous receipts. The Commissione
make this determination based
ports, audits and other appro
documents as determined by the
missioner. The Commissioner wi
into consideration the costs nec
to collect loans outstanding b
November 29, 1992, which costs
be paid from interest and loan ch
collected by the Fund and in the
as of November 29, 1992. T
monies in the Fund for the co
collection after November 29, 199
Commissioner must give prior a
al for such use.

(e) All monies deposited in t
volving loan fund after Novemb
1992 must be deposited in the
ury of the United States as misce
ous receipts.

(f) After November 29, 1992
Loan Administrator will assum
sponsibility for the collection
outstanding loans without addi
financial assistance from ANA.

§ 1336.73 Eligible borrowers.

(a) Loans may be made to el
applicants only if the Loan Adr
trator determines that the applic
unable to obtain financing on rea
ble terms and conditions from
sources such as banks, Small Bu
Administration, Production Cred
sociations, Federal Land Banks; a

(b) Only if there is a reaso
prospect that the borrower will
the loan. (Section 803A(b)(1) (A
(B))

(c) The Loan Administrator wi
termine an applicant's inabili
obtain financing elsewhere on rea
ble terms and conditions from
mentation provided by the applic

(d) Those eligible to receive
from the revolving loan fund are:

(1) Native Hawaiian individuals

(2) Native Hawaiian non-profit organizations.

(3) Native Hawaiian businesses.

(4) Native Hawaiian cooperative associations.

(5) Native Hawaiian partnerships.

(6) Native Hawaiian associations.

(7) Native Hawaiian corporations.

§ 1336.74 Time limits and interest on loans.

(a) Loans made under the RLF will be for a term that does not exceed 5 years.

(b) Loans will be made to approved borrowers at a rate of interest that is 2 percentage points below the average market yield on the most recent public offering of United States Treasury bills occurring before the date on which the loan is made. (Section 803A(b)(2) (A) and (B))

§ 1336.75 Allowable loan activities.

The following are among those activities for which a loan may be made from the RLF:

(a) The establishment or expansion of businesses engaged in commercial, industrial or agricultural activities, such as farming, manufacturing, construction, sales, service;

(b) The establishment or expansion of cooperatives engaged in the production and marketing of farm products, equipment, or supplies; the manufacture and sale of industrial, commercial or consumer products; or the provision of various commercial services;

(c) Business or job retention;

(d) Small business development;

(e) Private sector job creation; and

(f) Promotion of economic diversification, e.g. targeting firms in growth industries that have not previously been part of a community's economic base.

§ 1336.76 Unallowable loan activities.

The following activities are among those activities not eligible for support under the revolving loan fund:

(a) Loans to the Loan Administrator or any representative or delegate of the Loan Administrator (Section 803A(b)(5));

(b) Loans which would create a potential conflict-of-interest for any officer or employee of the Loan Administrator; loan activities which directly benefit these individuals, or persons related to them by marriage, or law.

(c) Eligible activities which are moved from the State of Hawaii;

(d) Investing in high interest account, certificates of deposit or other investments;

(e) Relending of the loan amount by the borrower;

(f) The purchase of land or buildings;

(g) The construction of buildings; and

(h) Purchasing or financing equity in private businesses.

§ 1336.77 Recovery of funds.

(a) Funds provided under this Subpart may be recovered by the Commissioner for both costs of administration of the Loan Fund and losses incurred by the Fund (hereafter jointly referred to as "costs") under the following circumstances:

(1) Whenever claimed costs are unallowable under the Native Americans Programs Act of 1974, as amended, or under 45 CFR Part 74, or both;

(2) For costs for loans made to ineligible persons or entities as defined in § 1336.73;

(3) For costs connected with the default of a borrower when the Loan Administrator has failed to perfect any security interest or when the Loan Administrator has failed to obtain collateral when provision of collateral is a condition of a loan.

(4) For costs connected with any default when the Loan Administrator has failed to perform a proper check of an applicant's credit;

(5) For costs whenever the Loan Administrator has failed to notify the Commission of loans at risk as required by § 1336.68 of these regulations, and as may be required by the procedures approved pursuant to that regulation;

(6) For costs whenever the Loan Administrator has failed to follow properly instructions provided to it by the Commissioner pursuant to § 1336.68(d) of these regulations;

(7) For costs which are incurred due to faulty record keeping, reporting, or both; or

(8) For costs which are in connection with any activity or action which violates any Federal or State law or regulation not specifically identified in these regulations.

(b) Whenever the Commissioner determines that funds have been improperly utilized or accounted for, he will issue a disallowance pursuant to the Act and to 45 CFR Part 74 and will notify the Loan Administrator of
its appeal rights, which ap
be taken pursuant to 45 CF

(c) If a disallowance is tak
appealed, or if it is appeale
disallowance is upheld by th
mental Grant Appeals B
Loan Administrator must
disallowed amount to the I
within 30 days, such repayi
made with non-Federal fund

SUBCHAPTER E—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAM

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

Subpart A—General Provisions

Sec.
1340.1 Purpose and scope.
1340.2 Definitions.
1340.3 Applicability of Department-wide regulations.
1340.4 Coordination requirements.

Subpart B—Grants to States

1340.10 Purpose of this subpart.
1340.11 Allocation of funds available.
1340.12 Application process.
1340.13 Approval of applications.
1340.14 Eligibility requirements.
1340.15 Services and treatment for disabled infants.

Subpart C—Discretionary Grants and Contracts

1340.20 Confidentiality.

APPENDIX TO PART 1340—INTERPRETATIVE GUIDELINES REGARDING 45 CFR 1340.15—SERVICES AND TREATMENT FOR DISABLED INFANTS.

AUTHORITY: The Child Abuse Prevention and Treatment Act, Pub. L. 93-247, 88 Stat. 4; Pub. L. 95-266, 92 Stat. 205, secs. 609-610; Pub. L. 97-35, 95 Stat. 488; Pub. L. 98-457, 98 Stat. 1749 (42 U.S.C. 5101 et seq.).

SOURCE: 48 FR 3702, Jan. 26, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 1340.1 Purpose and scope.

(a) This part implements the Child Abuse Prevention and Treatment Act of 1974, as amended. As authorized by the Act, the National Center on Child Abuse and Neglect seeks to assist agencies and organizations at the national, State and community levels in their efforts to improve and expand child abuse and neglect prevention and treatment activities.

(b) The National Center on Child Abuse and Neglect seeks to meet these goals through:

(1) Conducting activities directly (by the Center);

(2) Making grants to States to improve and expand their child abuse and neglect prevention and treatment programs;

(3) Making grants to and entering into contracts for: Research, demonstration and service improvement programs and projects, and training, technical assistance and informational activities; and

(4) Coordinating Federal activities related to child abuse and neglect. This part establishes the standards and procedures for conducting the grant funded activities and contract and coordination activities.

(c) Requirements related to child abuse and neglect applicable to programs assisted under title IV-B of the Social Security Act are implemented by regulation at 45 CFR Parts 1355 and 1357.

(d) Federal financial assistance is not available under the Act for the construction of facilities.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3994, Feb. 6, 1987]

§ 1340.2 Definitions.

For the purposes of this part:

(a) "A properly constituted authority" is an agency with the legal power and responsibility to perform an investigation and take necessary steps to prevent and treat child abuse and neglect. A properly constituted authority may include a legally mandated, public or private child protective agency, or the police, the juvenile court or any agency thereof.

(b) "Act" means the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101, et seq.

(c) "Center" means the National Center on Child Abuse and Neglect established by the Secretary under the Act to administer this program.

(d) "Child abuse and neglect" means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State, by a person including any employee of a residential facility or any staff person providing out of home care who is responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

(1) The term "sexual abuse" includes the following activities under circumstances which indicate that the child's health or welfare is harmed or threatened with harm: The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term "child" or "children" means any individual who has not attained the age of eighteen.

(2)(i) "Negligent treatment or maltreatment" includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child; provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to ensure that medical services are provided to the child when his health requires it.

(3) "Threatened harm to a child's health or welfare" means a substantial risk of harm to the child's health or welfare.

(4) "A person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting, or any staff person providing out
of home care. For purposes of this
inition, out-of-home care means c
day care, i.e., family day care, gr
day care, and center-based day c
and, at State option, any other
tings in which children are prov
care.

(e) "Commissioner" means the C
missioner of the Administration
Children, Youth and Families of
Department of Health and Hu
Services.

(f) "Grants" includes grants an
operative agreements.

(g) "Secretary" means the Secr
of Health and Human Service
other HHS official or employe
whom the Secretary has delegate
authority specified in this part.

(h) "State" means each of the s
al States, the District of Colu
Puerto Rico, American Samoa,
Virgin Islands, Guam, the Com
wealth of the Northern Marian
lands, and the Trust Territories o
Pacific.

[48 FR 3702, Jan. 26, 1983, as amende
FR 3994, Feb. 6, 1987]

§ 1340.3 Applicability of Departmen regulations.

(a) The following HHS regul
are applicable to all grants
under this part:

45 CFR Part 16—Procedures of the I
mental Grant Appeals Board.
45 CFR Part 46—Protection of hum
jects
45 CFR Part 74—Administration of g
45 CFR Part 75—Informal grant
procedures
45 CFR Part 80—Nondiscriminatio
programs receiving Federal as
through the Department of Hea
Human Services—effectuation of
of the Civil Rights Act of 1964
45 CFR Part 81—Practice and proce
hearings under Part 80
45 CFR Part 84—Nondiscrimination
basis of handicap in programs an
ties receiving or benefiting from
financial assistance.

(b) The following regulations
plicable to all contracts awarde
this part:

48 CFR Chapter 1—Federal
tion Regulations.

48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3995, Feb. 6, 1987]

§ 1340.4 Coordination requirements.

All Federal agencies responsible for programs related to child abuse and neglect shall provide information as required by the Commissioner to insure effective coordination of efforts.

Subpart B—Grants to States

§ 1340.10 Purpose of this subpart.

This subpart sets forth the requirements and procedures States must meet in order to receive discretionary grants to improve or expand State child abuse and neglect prevention and treatment programs under sections 4(b) (1) and (2) of the Act (42 U.S.C. 5103(b) (1) and (2)).

§ 1340.11 Allocation of funds available.

(a) The Commissioner shall allocate the funds available for grants to States for each fiscal year among the States on the basis of the following formula:

(1) An amount of $25,000 or such other amount as the Commissioner may determine; plus

(2) An additional amount bearing the same ratio to the total amount made available for this purpose (reduced by the minimum amounts allocated to the States under paragraph (a)(1) of this section) as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all the States. Annual estimates of the number of children under the age of eighteen, provided by the Bureau of the Census of the Department of Commerce, are used in making this determination.

(b) If a State has not qualified for assistance under the Act and this subpart prior to a date designated by the Commissioner in each fiscal year, the amount previously allocated to the State shall be allocated among the eligible States.

§ 1340.12 Application process.

(a) The Governor of the State may submit an application or designate the State office, agency, or organization which may apply for assistance under this subpart. The State office, agency, or organization need not be limited in its mandate or activities to child abuse and neglect.

(b) Grant applications must include a description of the activities presently conducted by the State and its political subdivisions in preventing and treating child abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to improve or expand child abuse prevention and treatment programs in the State, and other information required by the Commissioner in compliance with the paperwork reduction requirements of 44 U.S.C. Chapter 35 and any applicable directives issued by the Office of Management and Budget.

(c) States shall provide with the grant application a statement signed by the Governor that the State meets the requirements of the Act and of this subpart. This statement shall be in the form and include the documentation required by the Commissioner.

§ 1340.13 Approval of applications.

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

(1) The State is qualified and has met all requirements of the Act and § 1340.14 of this part, except for the definitional requirement of § 1340.14(a) with regard to the definition of "sexual abuse" (see § 1340.2(d)(1)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate medical care (see § 1340.2(d)(2)). The State must include these two definitional requirements in its definition of child abuse and neglect either by statute or regulation having the force and effect of law no later than the close of the second general legislative session of the State legislature following February 25, 1983;

(2) Either by statute or regulation having the force and effect of law, the

State modifies its definition of "child abuse and neglect" to provide that the phrase "person responsible for a child's welfare" includes an employee of a residential facility or a staff person providing out of home care no later than the close of the first general legislative session of the State legislature which convenes following the effective date of these regulations;

(3) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(4) The State is otherwise in compliance with these regulations.

(b) At the time of an award under this subpart, the amount of funds not obligated from an award made eighteen or more months previously shall be subtracted from the amount of funds under the award, unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

(c) Except for any requirement under section 4(b)(2)(K) of the Act and § 1340.15 of this part pertaining to medical neglect, a State which, on October 9, 1984, did not meet the eligibility requirements of section 4(b)(2) of the Act and this part and thus did not receive a State grant in FY 1984 may apply for a waiver of any requirement. In order to apply for a waiver, the Governor of the State must submit documentation of the specific measures the State has taken and will be taking to meet the as yet unmet eligibility requirement(s).

(1) State's whose legislatures meet annually may be granted a one-year waiver if OHDS finds that the State is making a good faith effort to comply with such requirement(s). This waiver is renewable for a second year if, based on additional documentation, the Secretary finds the State is making substantial progress to achieve compliance.

(2) States whose legislatures meet biennially may be granted a waiver for a non-renewable period of not more than two years if OHDS finds, based on documentation, the State is making a good faith effort to comply with any such requirement(s).

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3995, Feb. 6, 1987]

§ 1340.14 Eligibility requirements.

In order for a State to qualify for an award under this subpart, the State must meet the requirements of § 1340.15 and satisfy each of the following requirements:

(a) The State must satisfy each of the requirements provided in Section 4(b)(2) of the Act.

(b) *Definition of Child Abuse and Neglect.* Wherever the requirements below use the term "Child Abuse and Neglect" the State must define that term in accordance with § 1340.2. However, it is not necessary to adopt language identical to that used in § 1340.2, as long as the definition used in the State is the same in substance.

(c) *Reporting.* The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

(d) *Investigations.* The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. This investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.

(e) *Institutional child abuse and neglect.* The State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse or neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.

(f) *Emergency services.* If an investigation of a report reveals that the reported child or any other child under the same care is in need of immediate protection, the State must provide emergency services to protect the child's health and welfare. These services may include emergency caretaker or homemaker services; emergency shelter care or medical services; review by a multidisciplinary team; and, if appropriate, criminal or civil court action to protect the child, to help the parents or guardians in their responsibilities and, if necessary, to remove the child from a dangerous situation.

(g) *Guardian ad litem.* In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the guardian *ad litem* shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

(h) *Prevention and treatment services.* The State must demonstrate that it has throughout the State procedures and services deal with child abuse and neglect cases. These procedures and services include the determination of social service and medical needs and the provision of needed social and medical services.

(i) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) An agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect;

(viii) A person about whom a report has been made, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without information identifying individuals named in a report or record, unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval, and the child, through his/her representative as cited in paragraph (i) of this section, gives permission to release the information.

(3) If a State chooses, it may authorize by statute disclosure to additional persons and agencies, as determined by the State, for the purpose of carrying out background and/or employment-related screening of individuals who are or may be engaged in specified categories of child related activities or employment. Any information disclosed for this purpose is subject to the confidentiality requirements in paragraph (i)(1) and may be subject to additional safeguards as determined by the State.

(4) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(5) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

[48 FR 3702, Jan. 26, 1983, as amended at 50 FR 14887, April 15, 1985; 52 FR 3995, Feb. 6, 1987]

§ 1340.15 Services and treatment for disabled infants.

(a) *Purpose.* The regulations in this section implement certain provisions of the Child Abuse Amendments of 1984, including section 4(b)(2)(K) of the Child Abuse Prevention and Treatment Act governing the protection and care of disabled infants with life-threatening conditions.

(b) *Definitions.* (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 3 of the Act and § 1340.2(d) of this part. The term

"medical neglect" includes, but
limited to, the withholding of m
ly indicated treatment from a di
infant with a life-threatening
tion.

(2) The term "withholding of
cally indicated treatment" mea
failure to respond to the infant
threatening conditions by pro
treatment (including appropria
trition, hydration, and medic
which, in the treating physicia
physicians') reasonable medical
ment, will be most likely to be
tive in ameliorating or correcti
such conditions, except that th
does not include the failure to p
treatment (other than appropria
trition, hydration, or medicati
an infant when, in the treating
cian's (or physicians') reasonabl
ical judgment any of the followi
cumstances apply:

(i) The infant is chronically an
versibly comatose:

(ii) The provision of such trea
would merely prolong dying, not
fective in ameliorating or corr
all of the infant's life-threatenin
ditions, or otherwise be futile in
of the survival of the infant; or

(iii) The provision of such trea
would be virtually futile in ter
the survival of the infant an
treatment itself under such c
stances would be inhumane.

(3) Following are definitio
terms used in paragraph (b)(2)
section:

(i) The term "infant" mea
infant less than one year of ag
reference to less than one year
shall not be construed to impl
treatment should be changed
continued when an infant reach
year of age, or to affect or lim
existing protections available
State laws regarding medical
of children over one year of age.
dition to their applicability to i
less than one year of age, the
ards set forth in paragraph (b
this section should be consulte
oughly in the evaluation of an
of medical neglect involving an
older than one year of age wh
been continuously hospitalized
birth, who was born extremely

turely, or who has a long-term disability.

(ii) The term "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(c) *Eligibility Requirements.* (1) In addition to the other eligibility requirements set forth in this Part, to qualify for a grant under this section, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(2) These programs and/or procedures must provide for:

(i) Coordination and consultation with individuals designated by and within appropriate health care facilities;

(ii) Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(iii) The authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(3) The programs and/or procedures must specify that the child protective services system will prompty contact each health care facility to obtain the name, title, and telephone number of the individual(s) designated by such facility for the purpose of the coordination, consultation, and notification activities identified in paragraph (c)(2) of this section, and will at least annually recontact each health care facility to obtain any changes in the designations.

(4) These programs and/or procedures must be in writing and must conform with the requirements of section 4(b)(2) of the Act and § 1340.14 of this part. In connection with the requirement of conformity with the requirements of section 4(b)(2) of the Act and § 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:

(i) Access to medical records and/or other pertinent information when such access is necessary to assure an appropriate investigation of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions); and

(ii) A court order for an independent medical examination of the infant, or otherwise effect such an examination in accordance with processes established under State law, when necessary to assure an appropriate resolution of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions).

(5) The eligibility requirements contained in this section shall be effective October 9, 1985.

(d) *Documenting eligibility.* (1) In addition to the information and documentation required by and pursuant to § 1340.12(b) and (c), each State must submit with its application for a grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

(2) This information and documentation shall include:

(i) A copy of the written programs and/or procedures established by, and followed within, the State for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions:

(ii) Documentation that the State has authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to inititate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. This documentation shall consist of:

(A) A copy of the applicable provisions of State statute(s); or

(B) A copy of the applicable provisions of State rules or regulations, along with a copy of the State statutory provisions that provide the authority for such rules or regulations; or

(C) A copy of an official, numbered opinion of the Attorney General of the State that so provides, along with a copy of the applicable provisions of the State statute that provides a basis for the opinion, and a certification that the official opinion has been distributed to interested parties within the State, at least including all hospitals; and

(iii) Such other information and documentation as the Commissioner may require.

(e) *Regulatory construction.* (1) No provision of this section or part shall be construed to affect any right, protection, procedures, or requirement under 45 CFR Part 84, Nondiscrimination in the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

(2) No provision of this section or part may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws or regulations.

(Approved by the Office of Management and Budget under OMB control number 0980-0165.)

[50 FR 14887, April 15, 1985, as amended at 52 FR 3995, Feb. 6, 1987]

Subpart C—Discretionary Grants and Contracts

§ 1340.20 Confidentiality.

All projects and programs supported under the Act must hold all information related to personal facts or circumstances about individuals involved
in those projects or programs confi
dential and shall not disclose any o
the information in other than summa
ry, statistical, or other form whic
does not identify specific individual
except in accordance with § 1340.14(

APPENDIX TO PART 1340—INTERPRET
TIVE GUIDELINES REGARDING
CFR 1340.15—SERVICES AND TRE
MENT FOR DISABLED INFANTS

This appendix sets forth the Dep
ment's interpretative guidelines regar
several terms that appear in the defini
of the term "withholding of medically
cated treatment" in section 3(3) of the C
Abuse Prevention and Treatment Ac
amended by section 121(3) of the C
Abuse Amendments of 1984. This stat
definition is repeated in § 1340.15(b)(
the final rule.

The Department's proposed rule to i
ment those provisions of the Child
Amendments of 1984 relating to se
and treatment for disabled infants in
a number of proposed clarifying defi
of several terms used in the statutor
nition. The preamble to the propos
explained these proposed clarifying
tions, and in some cases used exam
specific diagnoses to elaborate on m

During the comment period on t
posed rule, many commenters urg
tion of these clarifying definiti
avoidance of examples of specific di
Many commenters also objected to
cific wording of some of the propo
fying definitions, particularly in co
with the proposed use of the wor
nent" to describe the proximity i
which death is anticipated rega
treatment in relation to circ
under which treatment (other th
priate nutrition, hydration and m
need not be provided. A letter fr
principal sponsors of the "c
amendment" which became the
provisions of the Child Abuse A
of 1984 urged deletion of "imm
careful consideration of the oth
expressed.

After consideration of these r
tions, the Department decided
these several proposed clarifyin
as part of the final rule. It was
that effective implementation
gram established by the
Amendments would be advance
partment stating its interpret
eral key terms in the statuto
This is the purpose of this app

The interpretative guidelines that follow have carefully considered comments submitted during the comment period on the proposed rule. These guidelines are set forth and explained without the use of specific diagnostic exmples to elaborate on meaning.

Finally, by way of introduction, the Department does not seek to establish these interpretative guidelines as binding rules of law, nor to prejudge the exercise of reasonable medical judgment in responding to specific circumstances. Rather, this guidance is intended to assist in interpreting the statutory definition so that it may be rationally and thoughtfully applied in specific contexts in a manner fully consistent with the legislative intent.

1. *In general: the statutory definition of "withholding of medically indicated treatment."*

Section 1340.15(b)(2) of the final rule defines the term "withholding of medically indicated treatment" with a definition identical to that which appears in section 3(3) of the Act (as amended by section 121(3) of the Child Abuse Amendments of 1984).

This definition has several main features. First, it establishes the basic principle that all disabled infants with life-threatening conditions must be given medically indicated treatment, defined in terms of action to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration or medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions.

Second, the statutory definition spells out three circumstances under which treatment is not considered "medically indicated." These are when, in the treating physician's (or physicians') reasonable medical judgment:

- The infant is chronically and irreversibly comatose;
- The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of survival of the infant; or
- The provision of such treatment would be virtually futile in terms of survival of the infant and the treatment itself under such circumstances would be inhumane.

The third key feature of the statutory definition is that even when one of these three circumstances is present, and thus the failure to provide treatment is not a "withholding of medically indicated treatment," the infant must nonetheless be provided with appropriate nutrition, hydration, and medication.

Fourth, the definition's focus on the potential effectiveness of treatment in ameliorating or correcting life-threatening conditions makes clear that it does not sanction decisions based on subjective opinions about the future "quality of life" of a retarded or disabled person.

The fifth main feature of the statutory definition is that its operation turns substantially on the "reasonable medical judgment" of the treating physician or physicians. The term "reasonable medical judgment" is defined in § 1340.15(b)(3)(ii) of the final rule, as it was in the Conference Committee Report on the Act, as a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

The Department's interpretations of key terms in the statutory definition are fully consistent with these basic principles reflected in the definition. The discussion that follows is organized under headings that generally correspond to the proposed clarifying definitions that appeared in the proposed rule but were not adopted in the final rule. The discussion also attempts to analyze and respond to significant comments received by the Department.

2. *The term "life-threatening condition".*

Clause (b)(3)(ii) of the proposed rule proposed a definition of the term "life-threatening condition." This term is used in the statutory definition in the following context:

> [T]he term "withholding of medically indicated treatment" means the failure to respond to the infant's *life-threatening conditions* by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions [, except that] * * *. [Emphasis supplied].

It appears to the Department that the applicability of the statutory definition might be uncertain to some people in cases where a condition may not, strictly speaking, by itself be life-threatening, but where the condition significantly increases the risk of the onset of complications that may threaten the life of the infant. If medically indicated treatment is available for such a condition, the failure to provide it may result in the onset of complications that, by the time the condition becomes life-threatening in the strictest sense, will eliminate or reduce the potential effectiveness of any treatment. Such a result cannot, in the Department's view, be squared with the Congressional intent.

Thus, the Department interprets the term "life-threatening condition" to include a condition that, in the treating physician's or physicians' reasonable medical judgment, significantly increases the risk of the onset of complications that may threaten the life of the infant.

In response to comments that the proposed rule's definition was potentially overinclusive by covering any condition that one could argue "may" become life-threatening, the Department notes that the statutory standard of "the treating physician's or physicians' reasonable medical judgment" is incorporated in the Department's interpretation, and is fully applicable.

Other commenters suggested that this interpretation would bring under the scope of the definition many irreversible conditions for which no corrective treatment is available. This is certainly not the intent. The Department's interpretation implies nothing about whether, or what, treatment should be provided. It simply makes clear that the criteria set forth in the statutory definition for evaluating whether, or what, treatment should be provided are applicable. That is just the start, not the end, of the analysis. The analysis then takes fully into account the reasonable medical judgment regarding potential effectiveness of possible treatments, and the like.

Other comments were that it is unnecessary to state any interpretation because reasonable medical judgment commonly deems the conditions described as life-threatening and responds accordingly. HHS agrees that this is common practice followed under reasonable medical judgment, just as all the standards incorporated in the statutory definition reflect common practice followed under reasonable medical judgment. For the reasons stated above, however, the Department believes it is useful to say so in these interpretative guidelines.

3. *The term "treatment" in the context of adequate evaluation.*

Clause (b)(3)(ii) of the proposed rule proposed a definition of the term "treatment." Two separate concepts were dealt with in clause (A) and (B), respectively, of the proposed rule. Both of these clauses were designed to ensure that the Congressional intent regarding the issues to be considered under the analysis set forth in the statutory definition is fully effectuated. Like the guidance regarding "life-threatening condition," discussed above, the Department's interpretations go to the applicability of the statutory analysis, not its result.

The Department believes that Congress intended that the standard of following reasonable medical judgment regarding the potential effectiveness of possible courses of action should apply to issues regarding adequate medical evaluation, just as it does to issues regarding adequate medical intervention. This is apparent Congressional intent because Congress adopted, in the Conference Report's definition of "reasonable medical judgment," the standard of adequate knowledge about the case and the
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In response to comments regarding the related provision in the proposed rule, this interpretative guideline makes quite clear that this interpretation does not deviate from the basic principle of reliance on reasonable medical judgment to determine the extent of the evaluations necessary in the particular case. Commenters expressed concerns that the provision in the proposed rule would intimidate physicians to seek transfer of seriously ill infants to tertiary level facilities much more often than necessary, potentially resulting in diversion of the limited capacities of these facilities away from those with real needs for the specialized care, unnecessary separation of infants from their parents when equally beneficial treatment could have been provided at the community or regional hospital, inappropriate deferral of therapy while time-consuming arrangements can be affected, and other counterproductive ramifications. The Department intended no intimidation, prescription or similar influence on reasonable medical judgment, but rather, intended only to affirm that it is the Department's interpretation that the reasonable medical judgment standard applies to issues of medical evaluation, as well as issues of medical intervention.

4. *The term "treatment" in the context of multiple treatments.*

Clause (b)(3)(iii)(B) of the proposed rule was designed to clarify that, in evaluating the potential effectiveness of a particular medical treatment or surgical procedure that can only be reasonably evaluated in the context of a complete potential treatment plan, the "treatment" to be evaluated under the standards of the statutory definition includes the multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions. Some commenters stated that it could be construed to require the carrying out of a long process of medical treatments or surgical procedures regardless of the lack of success of those done first. No such meaning is intended.

The intent is simply to characterize that which must be evaluated under the standards of the statutory definition, not to imply anything about the results of the evaluation. If parents refuse consent for a particular medical treatment or surgical procedure that by itself may not correct or ameliorate all life-threatening conditions, but is recommended as part of a total plan that involves multiple medical treatments and/or surgical procedures over a period of time that, in the treating physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, that would be a matter for appropriate action by the child protective services system.

On the other hand, if, in the treating physician's reasonable medical judgment, the total plan will, for example, be virtually futile and inhumane, within the meaning of the statutory term, then there is no "withholding of medically indicated treatment." Similarly, if a treatment plan is commenced on the basis of a reasonable medical judgment that there is a good chance that it will be effective, but due to a lack of success, unfavorable complications, or other factors, it becomes the treating physician's reasonable medical judgment that further treatment in accord with the prospective treatment plan, or alternative treatment, would be futile, then the failure to provide that treatment would not constitute a "withholding of medically indicated treatment." This analysis does not divert from the reasonable medical judgment standard of the statutory definition; it simply makes clear the Department's interpretation that the failure to evaluate the potential effectiveness of a treatment plan as a whole would be inconsistent with the legislative intent.

Thus, the Department interprets the term "treatment" to include (but not be limited to) multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions.

5. *The term "merely prolong dying."*

Clause (b)(3)(v) of the proposed rule proposed a definition of the term "merely prolong dying," which appears in the statutory definition. The proposed rule's provision stated that this term "refers to situations where death is imminent and treatment will do no more than postpone the act of dying."

Many commenters argued that the incorporation of the word "imminent," and its connotation of immediacy, appeared to deviate from the Congressional intent, as developed in the course of the lengthy legislative negotiations, that reasonable medical judgments can and do result in nontreatment decisions regarding some conditions for which treatment will do no more than temporarily postpone a death that will occur in the near future, but not necessarily within days. The six principal sponsors of the compromise amendment also strongly urged deletion of the word "imminent."

The Department's use of the term "imminent" in the proposed rule was not intended to convey a meaning not fully consonant with the statute. Rather, the Department intended that the word "imminent" would be applied in the context of the condition involved, and in such a context, it would not be understood to specify a particular number of days. As noted in the preamble to the proposed rule, this clarification was proposed to make clear that the "merely prolong dying" clause of the statutory definition would not be applicable to situations where treatment will not totally correct a medical condition but will give a patient many years of life. The Department continues to hold to this view.

To eliminate the type of misunderstanding evidenced in the comments, and to assure consistency with the statutory definition, the word "imminent" is not being adopted for purposes of these interpretative guidelines.

The Department interprets the term "merely prolong dying" as referring to situations where the prognosis is for death and, in the treating physician's (or physicians') reasonable medical judgment, further or alternative treatment would not alter the prognosis in an extension of time that would not render the treatment futile.

Thus, the Department continues to interpret Congressional intent as not permitting the "merely prolong dying" provision to apply where many years of life will result from the provision of treatment, or where the prognosis is not for death in the near future, but rather the more distant future. The Department also wants to make clear it does not intend the connotations many commenters associated with the word "imminent." In addition, contrary to the impression some commenters appeared to have regarding the proposed rule, the Department's interpretation is that reasonable medical judgments will be formed on the basis of knowledge about the condition(s) involved, the degree of inevitability of death, the probable effect of any potential treatments, the projected time period within which death will probably occur, and other pertinent factors.

6. *The term "not be effective in ameliorating or correcting all of the infant's life threatening conditions" in the context of a future life-threatening condition.*

Clause (b)(3)(vi) of the proposed rule proposed a definition of the term "not be effective in ameliorating or correcting all the infant's life-threatening conditions" used in the statutory definition of "withholding of medically indicated treatment."

The basic point made by the use of this term in the statutory definition was explained in the Conference Committee Report:

> Under the definition, if a disabled infant suffers from more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions, then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment.

H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1980).

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7. *The term "not b*
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Clause (b)(3)(iv)(B) of the proposed rule proposed to define the term "not be effective in ameliorating or correcting all life-threatening conditions" in the context where the issue is not life-saving treatment, but rather palliative treatment to make a condition more tolerable. An example of this situation is where an infant has more than one life-threatening condition, at least one of which is not treatable and will cause death in the near future. Palliative treatment is available, however, that will, in the treating physician's reasonable medical judgment, relieve severe pain associated with one of the conditions. If it is the treating physician's reasonable medical judgment that this palliative treatment will ameliorate the infant's *overall* condition, taking all individual conditions into account, even though it would not ameliorate or correct *each* condition, then this palliative treatment is medically indicated. Simply put, in the context of ameliorative treatment that will make a condition more tolerable, the term "not be effective in ameliorating or correcting *all* life-threatening conditions" should not be construed as meaning *each and every* condition, but rather as referring to the infant's *overall* condition.

HHS believes Congress did not intend to exclude humane treatment of this kind from the scope of "medically indicated treatment." The Conference Committee Report specifically recognized that "it is appropriate for a physician, in the exercise of reasonable medical judgment, to consider that factor [humaneness] in selecting among effective treatments." H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984). In addition, the articulation in the statutory definition of circumstances in which treatment need not be provided specifically states that "appropriate nutrition, hydration, and medication" must nonetheless be provided. The inclusion in this proviso of medication, one (but not the only) potential palliative treatment to relieve severe pain, corroborates the Department's interpretation that such palliative treatment that will ameliorate the infant's overall condition, and that in the exercise of reasonable medical judgment is humane and medically indicated, was not intended by Congress to be outside the scope of the statutory definition.

Thus, it is the Department's interpretation that the term "not be effective in ameliorating or correcting all of the infant's life-threatening conditions" does not permit the withholding of ameliorative treatment that, in the treating physician's or physicians' reasonable medical judgment, will make a condition more tolerable, such as providing palliative treatment to relieve severe pain, even if the overall prognosis, taking all conditions into account, is that the infant will not survive.

A number of commenters expressed concerns about some of the examples contained in the preamble of the proposed rule that discussed the proposed definition relating to this point, and stated that, depending on medical complications, exact prognosis, relationships to other conditions, and other factors, the treatment suggested in the examples might not necessarily be the treatment that reasonable medical judgment would decide would be most likely to be effective. In response to these comments, specific diagnostic examples have not been included in this discussion, and this interpretative guideline makes clear that the "reasonable medical judgment" standard applies on this point as well.

Other commenters argued that an interpretative guideline on this point is unnecessary because reasonable medical judgment would commonly provide ameliorative or palliative treatment in the circumstances described. The Department agrees that such treatment is common in the exercise of reasonable medical judgment, but believes it useful, for the reasons stated, to provide this interpretative guidance.

8. *The term "virtually futile"*.

Clause (b)(3)(vii) of the proposed rule proposed a definition of the term "virtually futile" contained in the statutory definition. The context of this term in the statutory definition is:

> [T]he term "withholding of medically indicated treatment" * * * does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, * * * the provision of such treatment would be *virtually futile* in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. Section 3(3)(C) of the Act [emphasis supplied].

The Department interprets the term "virtually futile" to mean that the treatment is highly unlikely to prevent death in the near future.

This interpretation is similar to those offered in connection with "merely prolong dying" and "not be effective in ameliorating or correcting all life-threatening conditions" in the context of a future life-threatening condition, with the addition of a characterization of likelihood that corresponds to the statutory word "virtually." For the reasons explained in the discussion of "merely prolong dying," the word "imminent" that was used in the proposed rule has not been adopted for purposes of this interpretative guideline.

Some commenters expressed concern regarding the words "highly unlikely," on the

grounds that such certitude is often medically impossible. Other commenters urged that a distinction should be made between generally utilized treatments and experimental treatments. The Department does not believe any special clarifications are needed to respond to these comments. The basic standard of reasonable medical judgment applies to the term "virtually futile." The Department's interpretation does not suggest an impossible or unrealistic standard of certitude for any medical judgment. Rather, the standard adopted in the law is that there be a "reasonable medical judgment." Similarly, reasonable medical judgment is the standard for evaluating potential treatment possibilities on the basis of the actual circumstances of the case. HHS does not believe it would be helpful to try to establish distinctions based on characterizations of the degree of general usage, extent of validated efficacy data, or other similar factors. The factors considered in the exercise of reasonable medical judgment, including any factors relating to human subjects experimentation standards, are not disturbed.

9. *The term "the treatment itself under such circumstances would be inhumane."*

Clause (b)(3)(viii) of the proposed rule proposed a definition of the term "the treatment itself under such circumstances would be inhumane," that appears in the statutory definition. The context of this term in the statutory definition is that it is not a "withholding of medically indicated treatment" to withhold treatment (other than appropriate nutrition, hydration, or medication) when, in the treating physician's reasonable medical judgment, "the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane." § 3(3)(C) of the Act.

The Department interprets the term "the treatment itself under such circumstances would be inhumane" to mean the treatment itself involves significant medical contraindications and/or significant pain and suffering for the infant that clearly outweigh the very slight potential benefit of the treatment for an infant highly unlikely to survive. (The Department further notes that the use of the term "inhumane" in this context is not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context; rather, it is recognized that it is appropriate for a physician, in the exercise of reasonable medical judgment, to consider that factor in selecting among effective treatments.)

Other clauses of the statutory definition focus on the expected *result* of the possible treatment. This provision of the statutory definition adds a consideration relating to the *process* of possible treatment. It recognizes that in the exercise of reasonable m
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10. *Other terms.*

Some comments suggested that the Department clarify other terms used in the statutory definition of "withholding of medically-indicated treatment," such as the term "appropriate nutrition, hydration or medication" in the context of treatment that may not be withheld, notwithstanding the existence of one of the circumstances under which the failure to provide treatment is not a "withholding of medically indicated treatment." Some commenters stated, for example, that very potent pharmacologic agents, like other methods of medical intervention, can produce results accurately described as accomplishing no more than to merely prolong dying, or be futile in terms of the survival of the infant, or the like, and that, therefore, the Department should clarify that the proviso regarding "appropriate nutrition, hydration or medication" should not be construed entirely independently of the circumstances under which other treatment need not be provided.

The Department has not adopted an interpretative guideline on this point because it appears none is necessary. As noted above in the discussion of palliative treatment, the Department recognizes that there is no absolutely clear line between medication and treatment other than medication that would justify excluding the latter from the scope of palliative treatment that reasonable medical judgment would find medically indicated, notwithstanding a very poor prognosis.

Similarly, the Department recognizes that in some circumstances, certain pharmacologic agents, not medically indicated for palliative purposes, might, in the exercise of reasonable medical judgment, also not be indicated for the purpose of correcting or ameliorating any particular condition because they will, for example, merely prolong dying. However, the Department believes the word "appropriate" in this proviso of the statutory definition is adequate to permit the exercise of reasonable medical judgment in the scenario referred to by these commenters.

At the same time, it should be clearly recognized that the statute is completely unequivocal in requiring that all infants receive "appropriate nutrition, hydration, and medication," regardless of their condition or prognosis.

[50 FR 14889, Apr. 15, 1985]

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SUBCHAPTER F—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, YOUTH SERVICES PROGRAMS

PART 1351—RUNAWAY YOUTH PROGRAM

Subpart A—Definition of Terms

Sec.
1351.1 Significant terms.

Subpart B—Runaway Youth Program Grant

1351.10 What is the purpose of the Runaway Youth Program grant?
1351.11 Who is eligible to apply for a Runaway Youth Program grant?
1351.12 Who gets priority for the award of a Runaway Youth Program grant?
1351.13 What are the Federal and non-Federal participation requirements under a Runaway Youth Program grant?
1351.14 What is the period for which a grant will be awarded?
1351.15 What costs are supportable under a Runaway Youth Program grant?
1351.16 What costs are not allowable under a Runaway Youth Program grant?
1351.17 How is application made for a Runaway Youth Program grant?
1351.18 What criteria has HHS established for deciding which Runaway Youth Program grant applications to fund?
1351.19 What additional information should an applicant or grantee have about a Runaway Youth Program grant?

Subpart C—Additional Requirements

1351.20 What are the additional requirements under a Runaway Youth Program grant?

AUTHORITY: 91 Stat. 1058 (42 U.S.C. 5711).

SOURCE: 43 FR 55635, Nov. 28, 1978, unless otherwise noted.

Subpart A—Definition of Terms

§ 1351.1 Significant terms.

For the purposes of this part:

(a) "Aftercare services" means the provision of services to runaway or otherwise homeless youth and their families, following the youth's return home or placement in alternative living arrangements which assist in alleviating the problems that contributed to his or her running away or being homeless.

(b) "Area" means a specific neighborhood or section of the locality in which the runaway youth project is or will be located.

(c) "Coordinated networks of agencies" means an association of two or more nonprofit private agencies, whose purpose is to develop or strengthen services to runaway or otherwise homeless youth and their families.

(d) "Counseling services" means the provision of guidance, support and advice to runaway or otherwise homeless youth and their families designed to alleviate the problems which contributed to the youth's running away or being homeless, resolve intrafamily problems, to reunite such youth with their families, whenever appropriate, and to help them decide upon a future course of action.

(e) "Demonstrably frequented by or reachable" means located in an area in which runaway or otherwise homeless youth congregate or an area accessible to such youth by public transportation or by the provision of transportation by the runaway youth project itself.

(f) "Homeless youth" means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care.

(g) "Juvenile justice system" means agencies such as, but not limited to juvenile courts, law enforcement, probation, parole, correctional institutions, training schools, and detention facilities.

(h) "Law enforcement structure" means any police activity or agency with legal responsibility for enforcing a criminal code including, police departments and sheriffs offices.

(i) "A locality" is a unit of general government—for example, a city, county, township, town, parish, village, or a combination of such units. Federally recognized Indian tribes are eligible to apply for grants as local units of government.

(j) "A nonprofit private agency" is any agency, organization, or institution whose net earnings do not benefit any private shareholder, governing board member, or individual and which agrees to be legally responsible for the operation of a runaway youth project. It may include agencies which are fully controlled by private boards or persons. Non-Federally recognized Indian tribes and Indian organizations are eligible to apply for grants as nonprofit private agencies.

(k) "Runaway youth project" means a locally controlled human service program facility outside the law enforcement structure and the juvenile justice system providing temporary shelter, either directly or through other facilities, counseling and aftercare services to runaway or otherwise homeless youth.

(l) "Runaway youth" means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian.

(m) "Short-term training" means the provision of local, State, or regionally based instruction to runaway or otherwise homeless youth service providers in skill areas that will directly strengthen service delivery.

(n) "A State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(o) "Technical assistance" means the provision of expertise or support for the purpose of strengthening the capabilities of grantee organizations to deliver services.

(p) "Temporary shelter" means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services, on a 24-hour basis, by a runaway youth project.

Subpart B—Runaway Youth Program Grant

§ 1351.10 What is the purpose of the Runaway Youth Program grant?

The purpose of the Runaway Youth Program grant is to establish or strengthen existing or proposed community-based runaway youth projects to provide temporary shelter and care to runaway or otherwise homeless youth who are in need of temporary shelter, counseling and aftercare services. The Department is concerned about the increasing numbers of youth who leave, and stay away from, their homes without permission of their parents or legal guardian. There is also national concern about runaway youth who have no resources, who live on the street, and who represent law enforcement problems in the communities to which they run. The problems of runaway or otherwise homeless youth should not be the responsibility of already overburdened police departments and juvenile justice authorities. Rather, Congress intends that the responsibility for locating, assisting, and returning such youth should be placed with low-cost, community-based human service programs.

§ 1351.11 Who is eligible to apply for a Runaway Youth Program grant?

(a) States, localities, nonprofit private agencies and coordinated networks of private nonprofit agencies are eligible to apply for a Runaway Youth Program grant unless they are part of the law enforcement structure or the juvenile justice system.

§ 1351.12 Who gets priority for the award of a Runaway Youth Program grant?

In making Runaway Youth Program grants, HHS gives priority to those private agencies which have had past experience in dealing with runaway or otherwise homeless youth. HHS also gives priority to applicants whose total grant requests for services to runaway or otherwise homeless youth are less than $100,000 and whose project budgets, considering all funding sources, are smaller than $150,000. Past experience means that a major activity of the agency has been the provision of temporary shelter, counseling, and referral services to runaway or otherwise homeless youth and their families, either directly or through linkages established with other community agencies.

§ 1351.13 What are the Federal and non-Federal Financial Participation requirements under a Runaway Youth Program grant?

HHS will pay 90 percent of the costs of operating a runaway youth project for any fiscal year. Grantees must pay 10 percent of the costs of operating a runaway youth project for any fiscal year.

§ 1351.14 What is the period for which a grant will be awarded?

(a) The initial notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed three years.

(b) Generally the grant will initially be for one year. A grantee must submit a separate application to have the support continued for each subsequent year. Continuation awards within the project period will be made provided the grantee has made satisfactory progress, funds are available, and HHS determines that continued funding is in the best interest of the Government.

§ 1351.15 What costs are supportable under a Runaway Youth Program grant?

Costs which can be supported include, but are not limited to, temporary shelter, referral services, counseling services, aftercare services, and staff training. Costs for acquisition and renovation of existing structures may not normally exceed 15 percent of the grant award. HHS may waive this limitation upon written request under special circumstances based on demonstrated need.

§ 1351.16 What costs are not allowable under a Runaway Youth Program grant?

A Runaway Youth Progam grant does not cover the cost of constructing new facilities.

§ 1351.17 How is application made for a Runaway Youth Program grant?

HHS publishes annually in the FEDERAL REGISTER a program announcement of grant funds available under the Runaway Youth Program Act. The program announcement states the amount of funds available, program priorities for funding, and criteria for evaluating applications in awarding grants. The announcement also describes specific procedures for receipt and review of applications. An applicant should:

(a) Obtain a program announcement from the FEDERAL REGISTER or from one of HHS's 10 Regional Offices in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, and Seattle;

(b) Obtain an application package from one of HHS's Regional Offices; and

(c) Submit a completed application to the Grants Management Office at the appropriate Regional Office.

[43 FR 55635, Nov. 28, 1978, as amended at 48 FR 29202, June 24, 1983]

§ 1351.18 What criteria has HHS established for deciding which Runaway Youth Program grant applications to fund?

In reviewing applications for a Runaway Youth Program grant, HHS takes into consideration a number of factors, including:

(a) Whether the application meets one or more of the program's funding priorities; (see § 1351.12)

(b) The need for Federal support based on the number of runaway or otherwise homeless youth in the area in which the runaway youth project is or will be located;

(c) The availability of services to runaway or otherwise homeless youth in the area in which the runaway youth project is located;

(d) Whether there is a minimum residential capacity of four and a maximum residential capacity not to exceed 20 youth with a ratio of staff to youth sufficient to assure adequate supervision and treatment;

(e) Plans for meeting the best interests of the youth involving, when possible, both the youth and the parent or legal guardian. These must include contacts with parents or legal guardian. This contact should be made within 24 hours, but must be made no more than 72 hours following the time of the youth's admission into the runaway youth project. The plans must also include assuring the youth's safe return home or to local government officials or law enforcement officials and indicate efforts to provide appropriate alternative living arrangements.

(f) Plans for the delivery of aftercare or counseling services to runaway or otherwise homeless youth and their parents or legal guardians;

(g) Whether the estimated cost to the Department for the runaway youth project is reasonable considering the anticipated results;

(h) Whether the proposed personnel are well qualified and the applicant agency has adequate facilities and resources;

(i) Whether the proposed project design, if well executed, is capable of attaining program objectives;

(j) The consistency of the grant application with the provisions of the Act and these regulations.

§ 1351.19 What additional information should an applicant or grantee have about a Runaway Youth Program grant?

(a) Several other HHS rules and regulations apply to applicants for or recipients of Runaway Youth Program grants. These include:

(1) The provisions of 45 CFR Part 74 pertaining to the Administration of Grants;

(2) The provisions of 45 CFR Part 16, Departmental Grants Appeal Process, and the provisions of Informal Grant Appeal Procedures (Indirect Costs) in volume 45 CFR Part 75;

(3) The provisions of 45 CFR Part 80 and 45 CFR Part 81 pertaining to nondiscrimination under programs receiving Federal assistance, and hearing procedures;

(4) The provisions of 45 CFR Part 84 pertaining to discrimination on the basis of handicap;

(5) The provisions of 45 CFR Part 46 pertaining to protection of human subjects.

(b) Several program policies regarding confidentiality of information, treatment, conflict of interest and State protection apply to recipients of Runaway Youth Program grants. These include:

(1) *Confidential information.* All information including lists of names, addresses, photographs, and records of evaluation of individuals served by a runaway youth project shall be confidential and shall not be disclosed or transferred to any individual or to any public or private agency without written consent of the youth and parent or legal guardian. Youth served by a runaway youth project shall have the right to review their records; to correct a record or file a statement of disagreement; and to be apprised of the individuals who have reviewed their records. Procedures shall be established for the training of project staff in the protection of these rights and for the secure storage of records.

(2) *Medical, psychiatric or psychological treatment.* No youth shall be subject to medical, psychiatric or psychological treatment without the consent of the youth and parent or legal guardian unless otherwise permitted by State law.

(3) *Conflict of interest.* Employees or individuals participating in a program or project under the Act shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

(4) *State law protection.* HHS policies regarding confidential information and experimentation and treatment shall not apply if HHS finds that State law is more protective of the rights of runaway or otherwise homeless youth.

(c) Nothing in the Runaway Youth Act or these regulations gives the Federal Government control over the staffing and personnel decisions regarding individuals hired by a runaway youth project receiving Federal funds.

Subpart C—Additional Requirements

§ 1351.20 What are the additional requirements under a Runaway Youth Program grant?

(a) To improve the administration of the Runaway Youth Program by increasing the capability of the runaway youth service providers to deliver services, HHS will require grantees to accept technical assistance and short-term training as a condition of funding for each budget period.

(1) Technical assistance may be provided in, but not limited to, such areas as:

- Program Management,
- Fiscal Management,
- Development of coordinated networks of private nonprofit agencies to provide services, and
- Low cost community alternatives for runaway or otherwise homeless youth.

(2) Short-term training may be provided in, but not limited to, such areas as:

- Shelter facility staff development,
- Aftercare services or counseling,
- Fund raising techniques,
- Youth and Family counseling, ar
- Crisis intervention techniques.

(b) Grantees will be required to c ordinate their activities with the 2 hour National toll-free communicatio system which links runaway yout projects and other service provide with runaway or otherwise homele youth.

(c) Grantees will also be required submit statistical reports profiling th clients served. The statistical repor ing requirements are mandated by th Act which states that "runaway yout projects shall keep adequate statistic records profiling the children and pa ents which it serves . . ."

SUBCHAPTER G—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, CHILD WELFARE SERVICES

PART 1355—GENERAL

Sec.

1355.10 Scope.
1355.20 Definitions.
1355.21 State plan requirements for titles IV-E and IV-B.
1355.30 Other applicable regulations.

AUTHORITY: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 42 U.S.C. 670 et seq., 94 Stat. 501, 42 U.S.C 620 et seq., 94 Stat. 516 et seq., section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302.

§ 1355.10 Scope.

Part 1355 applies to State programs and contains general requirements for Federal financial participation under titles IV-E and IV-B of the Social Security Act, as amended.

[48 FR 23114, May 23, 1983]

§ 1355.20 Definitions.

(a) Unless otherwise specified, the following terms as they appear in 45 CFR Parts 1355, 1356 and 1357 of this title are defined as follows—

Act means the Social Security Act, as amended.

ACYF means Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services.

Child abuse and neglect means the definition contained in 45 CFR Part 1340, Child Abuse and Neglect Prevention and Treatment Program.

Commissioner means the Commissioner for Children, Youth and Families (ACYF), Office of Human Development Services, U.S. Department of Health and Human Services.

Department means the United States Department of Health and Human Services.

Detention facility in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

Foster family home means the home of an individual or family licensed or approved by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities.

State means the 50 States, the District of Columbia, and, except in 45 CFR 1356.65 and 1356.70, the Commonwealth of Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands.

State agency means the State agency administering or supervising the administration of the title IV-E and title IV-B State plans.

(b) Unless otherwise specified, the definitions contained in section 475 of the Act apply to all programs under titles IV-E and IV-B of the Act.

[48 FR 23114, May 23, 1983]

§ 1355.21 State plan requirements for titles IV-E and IV-B.

(a) The State plans for titles IV-E and IV-B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The State plans for titles IV-E and IV-B must provide for compliance with the Department's regulations listed in 45 CFR 1355.30.

(c) The State plans and plan amendments for titles IV-E and IV-B must be made available by the State agency for public review and inspection.

[48 FR 23114, May 23, 1983]

§ 1355.30 Other applicable regulations.

The procedures and requirements in the following sections of 45 CFR shall apply to all programs funded under the provisions of these regulations and titles IV-E and IV-B of the Social Security Act (the Act)—

(a) Part 16, Department Grant Appeals Process;

(b) Part 74, Administration of Grants, except that Subpart I, Financial Reporting Requirements, shall not apply. The Commissioner for Children, Youth and Families (the Commissioner), shall provide forms and instructions for financial reporting.

(c) Part 95, General Administration—Grant Programs (Public Assistance and Medical Assistance).

(d) Section 201.5, Grants (except that ACYF shall supply appropriate forms and instructions).

(e) Section 201.6, Withholding/Reduction of FFP.

(f) Section 201.7, Judicial review.

(g) Section 201.15, Deferral.

(h) Section 201.66, Repayment of Federal funds in installments.

(i) Section 204.1, Submittal of State plans for Governor's review.

(j) Section 205.5, Plan amendments.

(k) Section 205.10, Hearings.

(l) Section 205.50, Safeguarding information.

(m) Section 205.100, Single State agency.

(n) Section 205.101, Organization for administration.

(o) Section 205.150, Cost allocation plans.

[47 FR 30925, July 15, 1982]

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E

Sec.
1356.10 Scope.
1356.20 State plan document and submission requirements.
1356.21 Foster care maintenance payments program implementation requirements.
1356.30 Implementation requirements for children voluntarily placed in foster care.
1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.
1356.50 Withholding of funds for non-compliance with the approved title IV-E State plan.
1356.60 Fiscal requirements (title IV-E).
1356.65 State foster care allotment (title IV-E).
1356.70 Transfer of funds from title IV-E to title IV-B.

AUTHORITY: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 42 U.S.C. 670 et seq., 94 Stat. 501, 42 U.S.C. 620 et seq., 94 Stat. 516 et seq., section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302.

§ 1356.10 Scope.

This part applies to State programs for foster care maintenance payments, adoption assistance payments and related administrative and training expenditures under title IV-E of the Act.

[48 FR 23115, May 23, 1983]

§ 1356.20 State plan document and submission requirements.

(a) To be in compliance with the State plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments and adoption assistance under this part, a State must have a State plan approved by the Secretary that meets the requirements of this part, Part 1355 and section 471(a) of the Act. The title IV-E State plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the State.

(b) If a State chooses to claim FFP for voluntary foster care placements, the State must meet the requirements of paragraph (a) of this section and section 102 of Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, as it amends section 472 of the Act.

(c) The following procedures for approval of State plans and amendments apply to the title IV-E program:

(1) The State plan consists of written documents furnished by the State to cover its program under Part E of title IV. After approval of the original plan by the Commissioner, ACYF, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that

ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review and then to the regional office, ACYF. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(4) *Action.* The Regional Office, ACYF, exercises delegated authority to take affirmative action on State plans and amendments thereto on the basis of policy statements or precedents previously approved by the Commissioner, ACYF. The Commissioner, ACYF, retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Commissioner, ACYF with the Secretary. The Regional Office, ACYF, formally notifies the State agency of the actions taken on State plans or revisions.

(5) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) *Prompt approval of State plans.* The determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period.

(7) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan, the procedures under § 201.6 (a) and (b) shall be applicable.

(8) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments.

(d) Once the title IV-E State plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0141)

[48 FR 23115, May 23, 1983]

§ 1356.21 Foster care maintenance payments program implementation requirements.

(a) To implement the foster care maintenance payments program provisions of the title IV-E State plan and to be eligible to receive Federal financial participation for foster care maintenance payments under this part, a State must meet the requirements of this section, and sections 472, 475(1), 475(4), 475(5) (A) and (B) and 475(6) of the Act.

(b) In meeting the "reasonable efforts" requirements of sections 471(a)(15) and 472(a)(1) of the Act, effective October 1, 1983, the State must meet the requirements of paragraph (d)(4) of this section. (See also section 45 CFR 1357.15(e) for examples of services.)

(c) In meeting the requirements of section 471(a)(16) of the Act for a case review system, each State's case review system must meet the requirements of sections 475(5)(B) and 475(6) of the Act.

(d) In meeting the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is available to the parent(s) or guardian of the foster child; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days starting at the time the State agency assumes responsibility for providing services including placing the child; and

(3) Include a discussion of how the plan is designed to achieve a placement in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s), consistent with the best interest and special needs of the child; and

(4) After October 1, 1983, include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0140)

(e) If a State chooses to claim FFP for the costs of voluntary foster care maintenance payment; chooses to transfer funds from title IV-E to title IV-B, or certifies compliance with the requirements of section 427 of the Act, it must, among other requirements, meet the requirements for dispositional hearings in section 475(5)(C) of the Act. In meeting the requirements of section 475(5)(C), the dispositional hearing must take place within 18 months of the date of the original foster care placement and within reasonable, specific, time-limited periods to be established by the State. The provisions of this paragraph and section 475(5)(C) of the Act must apply to all children under the responsibility for placement and care of the title IV-E/IV-B State agency except:

(1) For those children who are placed in a court sanctioned permanent foster family home placement with a specific care giver, no subsequent dispositional hearings are required during the continuation of that specific permanent placement. If the foster care placement of such a child is subsequently changed, the child is again entitled to dispositional hearings.

(2) For those children who are free for adoption and are placed in adoptive homes pending the finalization of the adoption, no subsequent dispositional hearings are required during the continuation of that placement. If such a child is not adopted within a reasonable time after placement, the child is again entitled to dispositional hearings.

(f) For purposes of meeting the requirements of the Act and regulation with respect to paragraphs (c), (d) and (e) of this section, 45 CFR 1356.30(b) and sections 471(a)(16) and 475(5) of the Act, the following definition applies: *Original foster care placement* means the date of the child's most recent removal from his home and placement into foster care under the care and responsibility of the State agency. This definition is the point in time used in calculating all time periods related to the case review system. (See also section 475(5) of the Act.)

(g) In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific, time-limited periods to be established by the State:

(1) The amount of the payment made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(h) The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation provided such administrative regulation has the force of law.

[48 FR 23115, May 23, 1983]

1356.30 Implementation requirements for children voluntarily placed in foster care.

(a) As a condition of receipt of Fed-
ral financial participation (FFP) in
oster care maintenance payments for
dependent child removed from his
ome under a voluntary placement
greement, the State must meet the
equirements of:

(1) Section 472 of the Act (as amend-
by section 102(a) of Pub. L. 96-272);

(2) Section 102(d) of Pub. L. 96-272;

(3) Sections 427(b) and 475(5) of the
t;

4) 45 CFR 1356.21 (e) and (f); and

5) The requirements of this section.

b) Federal financial participation is
ailable only for voluntary foster
e maintenance expenditures made
hin the first 180 days after the date
the original foster care placement
less there has been a judicial deter-
nation by a court of competent ju-
diction within the first 180 days of
date of that original placement to
effect that the continued volun-
placement is in the best interests
he child

) The State agency must establish
maintain a uniform procedure or
em, consistent with State law, for
ocation by the parent(s) of a voluntary placement agreement and return of the child.

[48 FR 23116, May 23, 1983]

§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

(a) To implement the adoption assistance program provisions of the title IV-E State plan and to be eligible for Federal financial participation in adoption assistance payments under this Part, the State must meet the requirements of this section and sections 471(a), 473 and 475(3) of the Act.

(b) The adoption assistance agreement must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the interlocutory decree or at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

(2) Specify its duration; and

(3) Specify the amount of assistance and other services to be provided and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement remains in effect if a family changes its State of residence.

(c) For purposes of implementing section 473 of the Act, *interlocutory decree* means a court order granting legal custody or guardianship to the adoptive petitioners prior to the final decree of adoption.

(d) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(e) In the event an adoptive family moves from one State to another State, the family may apply for social services on behalf of the adoptive child in the new State of residence. However, for agreements entered into on or after October 1, 1983, if a needed service(s) specified in the adoption assistance agreement is not available in the new State of residence, the State making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(f) A State may make an adoption assistance agreement with adopting parent(s) who reside in another State. If so, all provisions of this section apply.

(g) The State agency must actively seek ways to promote the adoption assistance program.

[48 FR 23116, May 23, 1983]

§1356.50 Withholding of funds for noncompliance with the approved title IV-E State plan.

(a) To be in compliance with the title IV-E State plan requirements, a State must meet the requirements of the Act and 45 CFR 1356.20, 1356.21 and 1356.40 of this part.

(b) To be in compliance with the title IV-E State plan requirements, a State that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.30 and paragraph (a) of this section; and

(c) For purposes of this section, the provisions of 45 CFR Part 213, Practice and Procedure for Hearings to States on Conformity of Public Assistance Plans to Federal Requirements, apply.

[48 FR 23117, May 23, 1983]

§1356.60 Fiscal requirements (title IV-E).

(a) *Federal matching funds for foster care maintenance and adoption assistance payments.* (1) Effective October 1, 1980, Federal financial participation (FFP) is available to States under an approved title IV-E State plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with 45 CFR 1356.20 through 1356.30 of this part, section 472 of the Act and section 102(d) of Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980;

(ii) Adoption assistance payments made in accordance with 45 CFR 1356.20 and 1356.40 and sections 473 and 475(3) of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b) of the A Definitions, and pertinent regulatio as promulgated by the Secretary, his designee.

(b) *Federal matching funds for St and local training for foster care a adoption assistance under title IV* (1) Federal financial participation available at the rate of seventy-f percent (75%) in the costs of traini personnel employed or preparing employment by the State or lo agency administering the plan.

(2) All training activities and co funded under title IV-E shall be cluded in the State agency's traini plan for title IV-B.

(3) Short and long term training educational institutions and in-serv training may be provided in acco ance with the provisions of §§ 235. through 235.66(a) of this title.

(c) *Federal matching funds for oth State and local administrative exper itures for foster care and adoption sistance under title IV-E.* Federal nancial participation is available the rate of fifty percent (50%) for ministrative expenditures necessa for the proper and efficient admin tration of the title IV-E State pl The State's cost allocation plan sh identify which costs are allocated a claimed under this program.

(1) The determination and redete mination of eligibility, fair hearin and appeals, rate setting and oth costs directly related only to the ministration of the foster care p gram under this part are deemed lowable administrative costs und this paragraph. They may not claimed under any other section Federal program.

(2) The following are examples of lowable administrative costs necessa for the administration of the fost care program:

(i) Referral to services;

(ii) Preparation for and participati in judicial determinations;

(iii) Placement of the child;

(iv) Development of the case plan;

(v) Case reviews;

(vi) Case management and super sion;

(vii) Recruitment and licensing foster homes and institutions;

(viii) Rate setting; and

(ix) A proportionate share of related agency overhead.

(3) Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

(4) Funds expended with respect to nonrecurring costs of adoption proceedings for children on behalf of whom adoption assistance is provided under the State plan may not be reimbursed as administrative costs under IV-E.

(5) Foster and adoptive parents, and staff of licensed or approved child care insititutions providing foster care under this part shall be eligible for short-term training at the initiation of or during their provision of care. FFP directly related to such training shall be limited to travel and per diem.

(Approved by the Office of Management and Budget under control numbers 0980-0130 and 0980-0131)

[47 FR 30925, July 15, 1982, as amended at 48 FR 23117, May 23, 1983]

§ 1356.65 State foster care allotment (title IV-E).

The State allotment for foster care under this part of Fiscal Years 1981 through 1984 shall be the greater amount as determined under paragraph (a) or (b) of this section; or, at the option of the State, under paragraph (c) of this section. This determination is made without regard to the allotment for any prior fiscal year except as specified under paragraph (c)(3) of this section. The State need not select the same option each year. The allotment is a single dollar amount, limiting Federal funds reimbursed to a State for foster care payments and related administrative expenditures (including training).

(a) The first method provides for the calculation of the base amount and adjustments for each fiscal year as follows:

(1) For purposes of determining allotments for later years, for Fiscal Year 1980, the State's allotment is the base amount increased by 21.2%.

(2) For each of the Fiscal Years 1981 through 1984, the allotment for the State shall be an amount equal to the State's allotment for the preceding fiscal year, increased or decreased by twice the change (but not more than 10%) in the percentage of the Consumer Price Index, prepared by the U.S. Department of Labor, and used to determine the cost of living adjustments for Social Security benefits under section 215(i) of the Act, Cost of Living Increases in Benefits. For this calculation, second quarter data of the preceding fiscal year shall be compared to those for the second quarter of the second preceding fiscal year. The arithmetic mean for the three months of the second quarter shall be used to establish the Consumer Price Index for this quarter.

(3) The base amount in paragraph (a)(1) of this section, is calculated using the following formula: Maintenance payments plus attributable administrative expenditures plus attributable training expenditures. For the purposes of this formula:

(i) *Maintenance payments* are determined by:

(A) The amount of Federal funds that have been or may be paid on behalf of allowable claims for foster care maintenance payments for FY 1978 submitted to DHHS in accordance with section 306 of Pub. L. 96-272 (94 Stat. 530); and

(B) The amount of Federal funds that would have been paid for allowable claims on behalf of children meeting all requirements of section 408 of the Act for FY 1978 except that the State, on a Statewide basis, did not make such payments under State law, regulation or policy solely because the foster care was provided by a relative(s) of a child.

(ii) *Attributable administrative expenditures* means State expenditures for Fiscal Year 1978 attributable to the performance of activities required under Section 408 of the Act for children for whom maintenance payments are included under paragraphs (a)(3)(i) (A) and (B) of this section, regardless of whether payment for the administrative expenditures might have been made under section 403 of the Act. Expenditures which may be included are limited to costs of conducting for those children: eligibility determination and redetermination, quality control, fair hearings and appeals, agency activities in judicial determination, placement, case review, case management and supervision, rate-setting, recruitment of foster care homes and institutions, licensing and a proportionate share of general related agency overhead. The amount of these expenditures is determined by one of the following three methods:

(A) By actual administrative expenditures attributable to the provision of foster care maintenance payments for Fiscal Year 1978, multiplied by 50%, if a State submits a report of these expenditures which is satisfactory to the Secretary and which is supported by documentation;

(B) By an amount determined by the following formula:

(*1*) The State's total AFDC administrative expenditures for Fiscal Year 1978 divided by the State's average monthly number of AFDC cases in fiscal year 1978;

(*2*) The result of step (*1*) multiplied by 50%;

(*3*) The product of step (*2*) multiplied by the average monthly number of AFDC-Foster Care cases in Fiscal Year 1978; or

(*C*) By an amount determined as follows:

(*1*) The State's administrative expenditures (as stated in § 1356.60(c)) of this part attributable to foster care maintenance payments made under title IV-E or IV-A during a period of three or more calendar months of Fiscal Year 1981 divided by the number of months in the period;

(*2*) The result of (*1*) reduced to the comparable Fiscal Year 1978 amount by use of the Implicit Price Deflator for State and Local Government Purchases (issued by the U.S. Department of Commerce);

(*3*) The result of (*2*) multiplied by the ratio of the average monthly number of AFDC-Foster Care cases in Fiscal Year 1978 compared to the comparable number of cases for the period used in (*1*);

(*4*) The product in (*3*) multiplied by 12 (for an annual amount); and

(*5*) The product in (*4*) multiplied by 50 percent (the FFP rate in administrative expenditures).

(*6*) The data in paragraph (*1*) need not have been paid or claimed under Section 403 or 474 of the Act. They must have been reported to the Regional Program Director, ACYF no later than 30 days after the end of Fiscal Year 1981 in accordance with instructions from the Commissioner.

(iii) *Attributable Training Expenditures* are determined by:

(A) Actual training expenditures attributable to the provision of foster care maintenance payments for FY 1978, multiplied by 75%, if a State submits a report of these expenditures which is satisfactory to the Secretary and supported by documentation; or

(B) An amount determined by the following formula:

(*1*) The State's total AFDC training expenditurs for FY 1978 divided by the State's average monthly number of AFDC cases in FY 1978;

(*2*) The result of (*1*) multiplied by 75%;

(*3*) The product of (*2*) multiplied by the average monthly number of AFDC-Foster Care cases in FY 1978.

(iv) *Sources of data and documentation.* (A) All claims must be submitted on forms provided by the Secretary and in accordance with the constraints of Section 306 of Pub. L. 96-272 (94 Stat. 530).

(B) All reports to establish the claims which would have been allowable under paragraph (a) (3)(i)(B), (3)(ii)(A) of this section or

(*i*) Paragraph (a)(3)(iii)(A) of this section must have been submitted on forms provided by the secretary within forty-five (45) days after the end of the second quarter of FY 1981.

(v) *Disputed claims or reports.* (A) Only the following claims or reports in which DHHS and a State have a dispute will be included in the base amount:

(*1*) For maintenance payments, the claims submitted to DHHS in accordance with section 306 of Pub. L. 96-272, and the reports submitted to DHHS on expeditures and reported numbers of children under paragraph (3)(i)(B) of this section;

(*2*) For attributable administrative expenditures, the dollar amount reported to DHHS in accordance with paragraph (a)(3)(ii)(A) of this section;

(3) For attributable training expenditures, the dollar amount reported to DHHS in accordance with paragraph (a)(3)(iii)(A) of this section;

(4) Any claims or reported data in which a State and the Secretary have a dispute will be included in the base amount until the beginning of the fiscal year after the fiscal year in which the dispute is finally resolved by the Department. Allotments for fiscal years after solution of the dispute will be computed using the revised base amount.

(b) Under the second method, the allotment for the State equals an amount which bears the same ratio to $100 million as the under age 18 population of that State bears to the under age 18 population of the fifty States and the District of Columbia.

(c) Eligible States may select that their allotment be calculated by a third method.

(1) A State may *not* exercise this option unless: (i) In FY 1978, the percentage of the average monthly number of children in the State under age 18 who received AFDC-foster care maintenance payments under title IV-A of the Act as a proportion of all children under age 18 in the State was less than the corresponding national percentage for the 50 States and the District of Columbia;

(ii) Beginning in FY 1982, the percentage of the State's average monthly number of children under age 18 who received foster care maintenance payments during the Fiscal Year under title IV-A or IV-E of the Act compared to the State's total number of children under age 18 during the Fiscal Year has not exceeded the corresponding national percentage of the 50 States and the District of Columbia during Fiscal Year 1978.

(2) Under this method, the allotment is calculated as follows: (i) The base amount is determined by applying the provisions of paragraph (a)(3) of this section.

(ii) If for any of the fiscal years 1981-1984, the average monthly number of children receiving foster care maintenance payments in the State under title IV-A or IV-E of the Act exceeds the average monthly number of such children in the State for FY 1978, the base amount for that fiscal year shall be further increased by the percentage of increase in the State's foster care maintenance payment average monthly caseload for that Fiscal Year under title IV-A or IV-E of the Act over its comparable caseload under title IV-A for Fiscal Year 1978. This percentage increase may not exceed: for FY 1981—33.1%; FY 1982—46.4%; FY 1983—61.1%; and FY 1984—77.2%.

(iii) Increases or decreases in the base amount for each fiscal year are made in accordance with paragraphs (a)(1) and (2) of this section.

(3) If the State no longer meets the conditions for exercising the State option provided in paragraph (c)(1) of this section, but selected this option for the determination of its allotment for the preceding fiscal year, the allotment for the preceding fiscal year shall be used for the purpose of determining allotments for subsequent fiscal years through Fiscal Year 1984.

(4) For the purpose of establishing the average monthly number of children receiving foster care maintenance payments under title IV-A of the Act in Fiscal Year 1978 under this section, children who except for their placement with related persons would have received foster care under section 408 of the Act shall be included even though they did not receive foster care maintenance payments.

(5) For purposes of this allotment, in the event that there is a dispute between a State and the Secretary as to the number of such children (with respect to whom foster care maintenance payments were not made) for any fiscal year, then until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved by DHHS, determinations under the foregoing subparagraphs shall be made on the basis of the number of such children claimed by the State.

(6) Interim allotments for each fiscal year shall be issued by the Secretary, or his designee, for States eligible under this option (paragraph (c)(1) of this section) not later than six months after the beginning of the fiscal year. The interim allotments shall be based on the most satisfactory data then

available. The final allotment shall be issued not later than nine months after the end of that fiscal year and shall be based on the most recent satisfactory data then available.

(d) The limitation on available funds imposed by the allotment will be effective only if:

(1) The appropriation under section 420 of the Act for that fiscal year equals or exceeds the following amounts: for Fiscal Year 1981—$163,550,000; 1982—$220,000,000; and for Fiscal Years 1983 and 1984—$266,000,000; and

(2) With respect to each of the Fiscal Years 1982-1984, the appropriation for title IV-B under section 420 of the Act has been made before the beginning of the Fiscal Year to which the limitation applies.

(e) The State shall select the method for determining its allotment no later than forty-five (45) days after the end of the second quarter of the applicable (Federal) fiscal year.

[47 FR 30925, July 15, 1982]

§ 1356.70 Transfer of funds from title IV-E to title IV-B.

(a)(1) Funds available to the State within the foster care allotment for title IV-E which the State does not need for foster care purposes under title IV-E may be transferred to title IV-B and claimed by the State as reimbursement under that program only if the State has selected an allotment described under paragraph (a) or (b) of § 1356.65.

(2) If the limitation imposed by the allotment calculated under paragraph (a) or (b) of § 1356.65 is in effect, the amount of funds that a State may transfer to and claim under title IV-B is limited by the amount of funds not needed for foster care under title IV-E.

(3) If the limitation imposed by the allotment calculated under paragraph (a) or (b) of § 1356.65 is *not* in effect, the amount of funds that a State may transfer to and claim under title IV-B is further limited to the total amount of funds which, when added to the funds received under sections 420 and 424 of the Act for that Fiscal Year, would not exceed the State's share of the amounts listed in paragraph (d)(1) of § 1356.65.

(b) If the amount transferred to title IV-B, when added to the IV-B allotment, exceeds the amount which would be allotted to the State under title IV-B if the appropriation for title IV-B equaled $141 million, the State may transfer funds under paragraph (a) of this section only if it has met the requirements of section 427(a) of the Act.

(c) If the appropriation for each of any two consecutive fiscal years under section 420 of the Act equalled $266,000,000, the State may transfer funds under paragraph (a) of this section only if it has met the requirements of section 427(b) of the Act.

(d) If the total reimbursement to the State for expenditures under title IV-B (including transferred funds) equalled the State's share of $266,000,000 for each of two fiscal years in which the limitation under this section did *not* apply, the State may transfer funds under paragraph (a) of this section in any succeeding year only if it has met the requirements of section 427(b) of the Act.

(e) *Amount that may be transferred from title IV-E to title IV-B.* (1) The amount of funds that a State may transfer from title IV-E to title IV-B is:

(i) For any year in which the limitation specified under § 1356.65 is in effect, the amount by which the State's title IV-E foster care allotment exceeds the FFP in State expenditures needed for foster care maintenance payments and administrative expenditures, including training expenditures; and

(ii) For any year in which the limitations specified in § 1356.65 is *not* in effect, the amount determined under paragraph (e)(1)(i), of this section, is further limited to the amount which when added to the amount the State receives under section 420 of the Act (including any reallotted funds) does not exceed the amount of the State's allotment under section 420 of the Act which would have been in effect if the amount described under section 474(b)(2)(A) of the Act had been appropriated.

(2) Transferred funds must be used to reimburse expenditures under title IV-B (as defined under the regulations applicable to that program) for the same fiscal year for which they were originally available.

(i) The State shall apply for approval of transfer of these funds to the Regional ACYF office no later than August 15th, unless the Commissioner shall set a different date for all States because of special circumstances.

(ii) The procedures for application for funds and plans under title IV-B, including joint planning, shall apply to these funds.

(3) A State shall operate its foster care program under its State plan continuously throughout the time the plan is in effect, regardless of whether or not it has transferred funds under this section.

[47 FR 30925, July 15, 1982; 47 FR 36647, Aug. 23, 1982]

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B

Sec.
1357.10 Scope and definitions.
1357.15 Child welfare services State plan requirements and submittal.
1357.20 Child abuse and neglect programs.
1357.25 Requirements for eligibility for additional payments under section 427.
1357.30 Fiscal requirements (title IV-B).
1357.40 Direct payments to Indian Tribal Organizations.

AUTHORITY: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 42 U.S.C. 670 et seq., 94 Stat. 501, 42 U.S.C. 620 et seq., 94 Stat. 516 et seq., section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302.

§ 1357.10 Scope and definitions.

(a) *Scope.* This part applies to State programs for child welfare services (including related administrative expenditures) under title IV-B of the Act.

(b) Child welfare services under the title IV-B State plan must be available on the basis of need for services and must not be denied on the basis of financial need or length of residence in the State.

(c) *Definitions. Child Welfare Services* means the definition of services contained in section 425(a)(1) of the Act for which the State agency is responsible. (For purposes of 45 CFR 1357.40, Direct Payments to Indian Tribal Organizations, substitute "Indian Tribal Organization" for "State agency" wherever State agency appears.)

Child Welfare Services Plan (CWSP) means the document developed through joint planning which describes the child welfare services program for which the State agency is responsible, including services, program deficiencies, plans for program improvement and allocation of resources by type of service.

Joint Planning means State and Federal review and analysis of the State's child welfare services, including analysis of the service needs of children and their families, selection of unmet service needs that will be addressed in a plan for program improvement, and development of goals and objectives to enhance the capability of the State in providing child welfare services.

[48 FR 23117, May 23, 1983]

§ 1357.15 Child welfare services State plan requirements and submittal.

(a) In order to be eligible for Federal financial participation (FFP) under this part and title IV-B of the Act, a State must have a Child Welfare Services State Plan (CWSP) which meets the requirements of this section, sections 422 (a) and (b) of the Act and 45 CFR Part 1355.

(b) (1) The title IV-B State plan assurances required by sections 422(b) (1) through (4) and (7) and (8) of the Act may be submitted one time only and will remain in effect on an ongoing basis. However, these assurances must be amended when significant changes are made in a State's program in these areas.

(2) The descriptive information on the State's services program required by section 422(b) (5) and (6) of the Act must be submitted and be in effect for one, two or three fiscal years. The State may select which of the three intervals it wishes to use.

(c) In meeting the requirements of section 422(b)(5) of the Act, the State plan must contain a description of child welfare services provided to children and their families in the State and specify the geographic areas where these services will be available.

(d) In meeting the coordination requirements of section 422(b)(2) of the Act, and in the event that an Indian Tribal Organization (ITO) in a State applies for and receives direct title IV-B funding under section 428 of the Act, the State agency must make every reasonable effort to coordinate its title IV-B program with the title IV-B program of the ITO. The State must provide a copy of the title IV-B State plan upon request of the ITO.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0142)

(e) (1) In implementing the requirements of this section and sections 427(a) (2)(C) and 427(b) (3) of the Act, the State must specify, in its title IV-B State plan, which preplacement preventive and reunification services are available to children and families in need.

(2) The services specified may include: twenty-four hour emergency caretaker, and homemaker services; day care; crisis counseling; individual and family counseling; emergency shelters; procedures and arrangements for access to available emergency financial assistance; arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing children's removal from home; other services which the agency identifies as necessary and appropriate such as home-based family services, self-help groups, services to unmarried parents, provision of, or arrangements for, mental health, drug and alcohol abuse counseling, vocational counseling or vocational rehabilitation; and post adoption services.

(f) The State plan may be written in a form determined by the State.

(g) The jointly developed State plan must be submitted to the appropriate Regional Office, ACYF. The Regional Office, ACYF will notify the State when the State plan meets all the requirements of the Act.

[48 FR 23117, May 23, 1983]

§ 1357.20 Child abuse and neglect programs.

The State agency must assure that, with regard to any child abuse and neglect programs or projects funded under title IV-B of the Act, the requirements of paragraph (3) of section 4(b) of the Child Abuse Prevention and Treatment Act of 1974, as amended 42 U.S.C. Sec. 5103(b)(3) (Pub. L. 93-247), are met.

[48 FR 23118, May 23, 1983]

§ 1357.25 Requirements for eligibility for additional payments under section 427.

(a) For any fiscal year after FY 1979 in which a sum in excess of $141,000,000 is appropriated under Section 420 of the Act, a State is not eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to $141,000,000 unless the State complies with the requirements of Section 427(a) of the Act.

(b) In meeting the requirements for the inventory and statewide information system in sections 427 (a)(1) and (2)(A) of the Act, the inventory and statewide information system must include those children under the placement and care responsibility of the State title IV-B or IV-E agencies. At the State's discretion, other children may be included. The six month requirement in section 427(a)(1) and the twelve month requirement in section 427(a)(2)(A) of the Act must also be met.

(The requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0138.)

(c) If, for each of any two consecutive fiscal years after FY 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than $266,000,000, a State's allotment amount for any fiscal year after two such consecutive fiscal years shall be reduced to an amount equal to what the allotment amount would have been for FY 1979 unless the State has implemented the requirements of Section 427(b) of the Act.

(d) In meeting the requirements of section 427(a)(2)(B) of the Act for dispositional hearings the State agency must meet the requirements of section 475(5)(C) of the Act and 45 CFR 1356.21(e).

(e) A State may appeal a final decision by ACYF that the State has not met the requirements of this section and section 427 of the Act to the Department Grant Appeals Board under the provisions of 45 CFR Part 16.

[48 FR 23118, May 23, 1983]

§ 1357.30 Fiscal requirements (title IV-B).

(a) The requirements of this section shall apply to all funds allotted or re allotted to States under title IV-B and to all funds not needed for foster care which are transferred from title IV-A or title IV-E and awarded to States under title IV-B.

(b) Allotments for each State shall be determined in accordance with section 421 of the Act.

(c) Payments to States shall be made in accordance with section 423 of the Act.

(d) In the event of a State's failure to comply with the terms of the grant under title IV-B and with the regulations listed in § 1355.30, the provisions of §§ 74.113 through 74.115 of this title shall apply.

(e) Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 and, when applicable, section 427 of the Act, and in accordance with the grants administration requirements of 45 CFR Part 74 except that—

(1) Non-public third party in-kind contributions may not be used to meet the requirements of the non-Federal share of the costs of programs funded under this part.

(2) The total of Federal funds used for the following purposes under title IV-B may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:

(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(ii) Foster care maintenance payments, plus;

(iii) Adoption assistance payments.

(3) Notwithstanding paragraph (e)(2) of this section, State expenditures required to match the title IV-B allotment may include foster care maintenance expenditures in any amount.

(4) Funds awarded under title IV-B may not be used for the purchase, construction, or other capital costs for child care facilities.

(f) *Maintenance of effort.* (1) A State may not receive an amount of Federal funds under title IV-B in excess of the Federal payment made in FY 1979 under title IV-B unless the State's total expenditure of State and local appropriated funds for child welfare services under title IV-B of the Act is equal to or greater than the total of the State's expenditure from State and local appropriated funds used for similar covered services and programs under title IV-B in FY 1979.

(2) In computing a State's level of expenditures under this section in FY 1979 and any subsequent fiscal year, the following costs shall not be included—

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(iii) Adoption assistance payments.

(3) A State applying for an amount of Federal funds under title IV-B greater than the amount of title IV-B funds received by that State in FY 1979 shall certify:

(i) The amount of their expenditure in FY 1979 for child welfare services as described in paragraphs (f) (1) and (2) of this section, and

(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraphs (f)(1) and (2) of this section for the fiscal year for which application for funds is being made.

Records verifying the required certification shall be maintained by the State and made available to the Secretary as necessary to confirm compliance with this section.

(g) *Reallotment.* (1) When a State certifies to the Commissioner that funds available to that State under its title IV-B allotment will not be required for carrying out that State's plan, those funds shall be available for reallotment to other States.

(2) When a State, after receiving notice from the Commissioner of the availability of funds, does *not* certify by a date fixed by the Commissioner that it will be able to obligate during the fiscal year all of the funds available to it under its title IV-B allotment, those funds shall be available for reallotment to other States.

(3) The Commissioner may reallot available funds to another State when he determines that—

(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(ii) The State will be able to obligate the additional funds during the current fiscal year.

(4) To be eligible to receive funds under the reallotment provisions of this paragraph, the State shall submit an application by the date and in the form prescribed by the Commissioner.

(h) *Fiscal year of expenditures.* An expenditure under an annual budget will be charged to the FY in which the obligation was incurred (the year the Federal funds were awarded). Such budgets and expenditure reports as are required by the Commissioner will be prepared on this basis. For the purposes of this section and this paragraph, "obligation" means only bona-fide encumberances or commitments which are supported by contracts or other evidence of liability consistent with State purchasing procedures.

(i) *Liquidation of obligations.* All obligations of the State agency incurred in carrying out the annual budget must be liquidated within 2 years or the period within which claims must be filed under title IV-B, whichever is earlier.

(Approved by the Office of Management and Budget under control number 0989-0047)

[47 FR 30928, July 15, 1982]

§ 1357.40 Direct payments to Indian Tribal Organizations.

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them is eligible to apply for direct funding if:

(1) The Indian tribe (or tribes comprising the ITO) is providing, under a contract (or grant) with the Secretary of the Interior under section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) child welfare services which would, otherwise, be provided directly by the Secretary of the Interior; and

(2) The Indian tribe, consortium or group has a plan for child welfare services provided by the ITO that is jointly developed by the Indian Tribal Organization and the Department.

(b) *Joint planning.* For purposes of this section, Joint Planning means ITO and Federal review and analysis of the ITO's child welfare services including analysis of the service needs of children and their families, selection of unmet service needs that will be addressed in a plan for program improvement, and development of goals and objectives to enhance the capability of the tribe providing child welfare services.

(c) *Title IV-B plan requirements.* The Indian Tribal Organization's Title IV-B plan must meet all of the requirements of this paragraph. With respect to paragraph (c)(1) through (c)(5), of this section, the Indian Tribe/ITO must meet the requirements applicable to the State/State (or local) agency.

(1) Sections 422(a) and 422(b) (2) through (8) of the Act;

(2) 45 CFR 1355.20 and the definition of child welfare services in 45 CFR 1357.10(c);

(3) 45 CFR 1355.21(a);

(4) 45 CFR 1357.15(e);

(5) 45 CFR 1355.30 except that requirements of paragraphs (i) and (m) do not apply;

(6) The name of the ITO;

(7) A brief description of the ITO;

(8) A brief description of the legal and organizational relationship of the Tribal Organization to the Indians in the area to be served;

(9) A statement of the legal responsibility, if any, for children who are in foster care on the reservation and those awaiting adoption;

(10) A description of tribal jurisdiction in civil and criminal matters, existence or nonexistence of a tribal court and the type of court and codes, if any;

(11) An identification of the standards for foster family homes and institutional care and day care;

(12) The Indian Tribal Organization's political subdivisions, if any;

(13) Whether the Tribal Organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;

(14) Any limitations on authorities granted the ITO; and

(15) The tribal resolution(s) authorizing it to apply for a direct title IV-B grant under this part.

(d) *Submittal of the title IV-B services plan and annual budget request.* (1) The ITO's title IV-B Annual Budget Request must be submitted, in a form and manner prescribed by the Department to the appropriate regional Office, ACYF.

(2) The title IV-B services plan must be submitted to the appropriate Regional Office, ACYF, in a form, determined by the ITO.

(3) (i) ITO's title IV-B plan may, at the ITO's option, be submitted in two parts. One part may contain the information and assurances that typically remain in effect on an on-going basis. This part of the plan may be submitted one time only but must be amended when significant changes occur in an ITO's program.

(ii) The items in paragraph (c) of this section that may be submitted on a one time only basis are: the assurances required by section 422(b)(1) through (4) and (7) and (8) of the Act and the information required in paragraphs (c) (6) through (15) of this section.

(iii) The second part of the ITO's IV-B plan must be submitted and in effect for one, two or three fiscal years. The ITO may select which of the three intervals it wishes to use. This part of the plan must contain the information required by section 422(b) (5) and (6) of the Act.

(4) Upon submission to the appropriate Regional Office, ACYF, of a jointly developed plan, the ITO must promptly notify the title IV-B agency of the State(s) in which the tribe is located of the submission.

(e) *Coordination of services.* (1) In meeting the requirements of section 422(b)(2) of the Act, the ITO's plan must assure coordination of services with other Federal, State or tribal programs to ensure maximum availability and utilization of resources that promote and enhance the welfare of children, youth and families served under title IV-B.

(2) For purposes of coordination, the ITO must provide a copy of its plan to the State(s) upon request. The ITO must also make its title IV-B plan and plan amendments available for public review and inspection.

(f) *Requirements for eligibility for additional payments.* (1) For any fiscal year after FY 1979 in which a sum in excess of $141,000,000 is appropriate under Section 420 of the Act, an ITO is not eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to $141,000,000 unless the Indian Tribe/ITO has implemented the requirements applicable to the State/State agency in section 427(a) of the Act.

(2) If, for each of any two consecutive fiscal years after fiscal year 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than $266,000,000, a Tribe's allotment amount for any fiscal year after those two consecutive fiscal years must be reduced to an amount equal to what the allotment amount would have been for fiscal year 1979 unless the Indian Tribe/ITO has implemented the requirements applicable to the State/State agency in section 427(b) of the Act.

(3) The provisions applicable to the State/State agency in 45 CFR 1357.25 (d) and (e) apply to the Indian tribe/ITO.

(g) *Grants: General.* (1) Grants may be made to eligible Indian Tribal Organizations in a State which has a jointly developed Child Welfare Services Plan under title IV-B of the Act.

(2) Federal funds made available for a direct grant to an eligible ITO shall be paid by the Department, from the title IV-B allotment for the State in

which the ITO is located. Should a direct grant be approved, the Department shall promptly notify the State(s) affected.

(3) If an eligible ITO includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(4) The receipt of title IV-B funds must be in addition to and not a substitute for funds otherwise previo
expended by the ITO for child wel
services.

(5) The Indian Tribe/ITO n
adhere to the requirements applic
to the State/State agency in 45 (
1357.30, Fiscal Requirements (title
B).

[48 FR 23118, May 23, 1983]

SUBCHAPTER H—[RESERVED]

SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

Sec.
1385.1 General.
1385.2 Purpose of the regulations.
1385.3 Definitions.
1385.4 Rights of persons with developmental disabilities.
1385.5 Recovery of Federal funds used for construction of facilities.
1385.6 Employment of handicapped individuals.
1385.7 Waivers.
1385.8 Formula for determining allotments.
1385.9 Grants administration requirements.

AUTHORITY: Pub. L. 88-164, 77 Stat. 282, as amended by Pub. L. 90-170, 81 Stat. 527, Pub. L. 91-517, 84 Stat. 1316; Pub. L. 94-103, 89 Stat. 486; Pub. L. 95-602, 92 Stat. 2955; Pub. L. 97-35, 95 Stat. 563; Pub. L. 98-527 98 Stat. 2662 (42 U.S.C. 6000 et seq.).

SOURCE: 49 FR 11777, Mar. 27, 1984, unless otherwise noted.

§ 1385.1 General.

Except as specified in § 1385.4, the requirements in this Part are applicable to the following programs and projects:

(a) State Systems for Protection and Advocacy of Individual Rights of Persons with Developmental Disabilities;

(b) State Basic Program for Planning. Administration and Services on Behalf of Persons with Developmental Disabilities.

(c) Special Projects—Projects of National Significance; and

(d) University Affiliated Programs.

[52 FR 44845, Nov. 20, 1987]

§ 1385.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act as amended (42 U.S.C. 6000, et seq.).

§ 1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

Act means the statutory authority for the developmental disabilities programs as enacted in Pub. L. 88-164 and amended by Pub. L. 90-170, Pub. L. 91-517, Pub. L. 94-103, Pub. L. 95-602, Pub. L. 97-35, and Pub. L. 98-527. It may be cited as the Developmental Disabilities Assistance and Bill of Rights Act.

Commissioner means the Commissioner of the Administration on Development Disabilities, Office of Human Development Services, Department of Health and Human Services or his or her designee.

Department means the U.S. Department of Health and Human Services (HHS).

Fiscal year means the Federal fiscal year unless otherwise specified.

Governor means the chief executive officer of the State or Territory, or his or her designee who has been formally designated to act for the Governor in carrying out the requirements of the Act and these regulations.

Secretary means the Secretary of the Department of Health and Human Services.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44845, Nov. 20, 1987]

§ 1385.4 Rights of persons with developmental disabilities.

(a) Section 110 of the Act, *Rights of the Developmentally Disabled* (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy system.

(b) In order to comply with section 122(b)(5)(C) of the Act (42 U.S.C. 6022 (b)(5)(C), regarding the rights of developmentally disabled persons, the State must meet the requirements of § 1386.30(e)(3) of these regulations.

(c) Applications from university affiliated facilities or for special project grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with section 110 (see section 153(b)(3) and section 162(b)).

[52 FR 44845, Nov. 20, 1987]

§ 1385.5 Recovery of Federal funds used for construction of facilities.

(a) The State Council or the appropriate university affiliated facility official must notify the Commissioner in advance in writing if a facility described in section 105 of the act:

(1) Will be sold or transferred to any person, agency, or organization which is not a public or nonprofit private entity; or

(2) Will cease to be a public or other nonprofit facility for persons with developmental disabilities.

(b) The State Council or the appropriate UAF official must submit detailed documentation to the Commissioner of all transactions as specified in paragraph (a) of this section which occurred prior to this publication.

(c) Recovery of funds will include the charging of interest in accordance with HHS claims collection regulations in 45 CFR Part 30 and the Departmental Debt Collection Procedures (45 FR 61792, September 17, 1980) available from the Administration on Developmental Disabilities, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

[52 FR 44846, Nov. 20, 1987]

§ 1385.6 Employment of handicapped individuals.

Each grantee who receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. Failure to comply with section 109 may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in Subpart D of Part 1386.

[52 FR 44846, Nov. 20, 1987]

§ 1385.7 Waivers.

Applications for a waiver of the pr visions of sections 105 of the Act (U.S.C. 6004) with respect to altern tive use of facilities constructed wi funds under the Act may be grant by the Commissioner if the followi criteria are met:

(a) The waiver request provides basis for alternative use or sale of a cility constructed with funds approp ated under the Act.

(b) The clients served in the facili are or will be served in a facility equal or higher quality.

(c) If the waiver request is for an ternate use, that use must serve som other public purpose.

[49 FR 11777, Mar. 27, 1984, as amended 52 FR 44846, Nov. 20, 1987]

§ 1385.8 Formula for determining allo ments.

The Commissioner will alloca funds appropriated under the Act f the purpose of the basic State pr gram (see Subpart C—State Plan f Provision of Services for Persons wit Developmental Disabilities) and th protection and advocacy system (s Subpart B—State System for Prote tion and Advocacy of Individu Rights) on the following basis:

(a) Two-thirds of the amount appr priated are allotted to each State a cording to the ratio the population each State bears to the population the United States. This ratio is weigh ed by the relative per capita incom for each State. The data used to com pute allotments are supplied by th U.S. Department of Commerce, for th three most recent consecutive yea for which satisfactory data are avai able.

(b) One-third of the amount appr priated is allotted to each State on th basis of the relative need for servic of persons with developmental disabi ities. The relative need is determine by the number of persons receivin benefits under the Childhood Disabi ities Beneficiary Program (Sectio 202(d)(1)(B)(ii) of the Social Securit Act), (42 U.S.C. 402(d)(1)(B)(ii)).

§ 1385.9 Grants administration requirements.

(a) The following parts of Title 45 CFR apply to grants funded under Parts 1386 and 1388 of this chapter and to special project grants under section 162 of the Act (42 U.S.C. 6082).

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.
45 CFR Part 46—Protection of Human Subjects.
45 CFR Part 74—Administration of Grants.
45 CFR Part 75—Informal Grant Appeals Procedures.
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance Through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 81—Practice and Procedure for Hearings Act under Part 80 of this title.
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(b) The Departmental Grant Appeals Board also has jurisdiction over appeals by grantees who have received grants under the University Affiliated program or for a Special Project.

The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR Part 16.

(c) The Departmental Grant Appeals also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula grant programs—the Basic State Grant program and the State Protection and Advocacy system. Appeals filed by States shall be decided in accordance with 45 CFR Part 16.

(d) In making audits, examinations, excerpts and transcripts of records of grantees and subgrantees, including the protection and advocacy system, as provided for in 45 CFR Part 74, the Department will keep information about individual clients confidential to the extent permitted by law and regulations.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987]

PART 1386—FORMULA GRANT PROGRAMS

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AUTHORITY: Pub. L. 88-164, 77 Stat. 282, as amended by Pub. L. 90-170, 81 Stat. 527; Pub. L. 91-517, 84 Stat. 1316; Pub. L. 94-103, 89 Stat. 486; Pub. L. 95-602, 92 Stat. 2955; Pub. L. 97-35, 95 Stat. 563; Pub. L. 98-527, 98 Stat. 2662 (42 U.S.C. 6000 et seq.).

SOURCE: 49 FR 11779, Mar. 27, 1984, unless otherwise noted.

Subpart A—Basic Requirements

§ 1386.1 General.

All rules under this subpart are applicable to both the Protection and Advocacy System and State Basic Support Program.

§ 1386.2 Obligation of funds.

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States only within the same Federal fiscal year.

(b)(1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c)(1) Protection and Advocacy offices may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of a person with developmental disabilities as a basis for obligating funds for the litigation costs. The amount of the funds
obligated must not exceed a reas
ble estimate of the costs, and the
the estimate was calculated mus
documented.

(2) For the purpose of this p
graph, litigation costs mean expe
for court costs, depositions, expert
ness fees, travel in connection wi
case and similar costs and costs re
ing from litigation in which
agency has represented a developr
tally disabled person (e.g. monito
court orders, consent decrees), but
for salaries of employees of the
tection and Advocacy system.
funds made available to the S
Basic Support Program and to
P&A System obligated under
paragraph are subject to the requ
ment of paragraph (a) of this sect
These funds, if reobligated, may
reobligated only within the same f
year in which the funds were origi
ly obligated.

§ 1386.3 Liquidation of obligations.

(a) All obligations incurred purs
to a grant made under the Act f
specific Federal fiscal year, must
liquidated within two years of
close of the Federal fiscal yea
which the grant was awarded.

(b) The Commissioner may w
the requirements in paragraph (a
this section when State law imp
implementation or the amount of
gated funds to be liquidated is in
pute.

(c) Funds attributable to obligat
which are not liquidated in accord
with the provisions of this sec
revert to the Federal Government.

§ 1386.4 Eligibility for services.

(a) All persons who meet all of
criteria of the definition of deve
mental disability set forth in sec
102 of the Act (42 U.S.C. 6001) are
gible for available and appropr
services.

(b) In addition, a person who
the definition of developmental
ability as provided in Pub. L. 94-
and who was actually receiving on
more services under the Act du
the period October 1, 1968 thro
November 30, 1978, is eligible to
tinue to receive services, provided

person's Individual Habilitation Plan (IHP) indicates a continuing need for services.

[49 FR 11779, Mar. 27, 1984, as amended at 49 FR 18098, Apr. 27, 1984]

Subpart B—State System for Protection and Advocacy of Individual Rights

§ 1386.20 Designated State Protection and Advocacy Office.

(a) The Governor or other State official or entity so empowered must designate the State official or public or private agency to be accountable for the proper use of funds and conduct of the State Protection and Advocacy system.

(b) An agency of the State or private agency providing direct services, including guardianship services may not be designated as a Protection and Advocacy agency.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the proper and appropriate expenditure of Federal funds.

(d) Prior to any redesignation of the agency which administers the State Protection and Advocacy system, the Governor or a State official empowered by the Governor or State legislature must give public notice of the intent to redesignate and provide an opportunity for public comment on the proposed redesignation. The public notice must include:

(1) The Federal requirements for the Protection and Advocacy program (section 142 of the Act);

(2) The goals and function of the State's Protection and Advocacy program;

(3) Name of current designated agency;

(4) A description of the current Protection and advocacy agency and the system it administers;

(5) The reason(s) for proposing redesignation;

(6) Effective date of proposed redesignation;

(7) The name of the agency proposed to administer the State Protection and Advocacy program; and

(8) A description of the system which the new Protection and Advocacy agency would administer.

(e) Following receipt of comments from the public, the Governor or a State official empowered by the Governor or State legislature must submit the following information to the Commissioner:

(1) Documentation that the system was redesignated for good cause; Such documentation must clearly demonstrate that the existing Protection and Advocacy agency was not redesignated for any actions or activities undertaken which were consistent with section 142 of the Act, these regulations and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. 99-319.

(2) Assurance that the designated Protection and Advocacy system meets the requirements of the statute and the regulations.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987]

§ 1386.21 Requirements of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the Basic Support Program (subject C), the Protection and Advocacy system must meet the requirements of section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) The client's record is the property of the Protection and Advocacy system which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy system must:

(1) Keep confidential all information contained in a client's records including information contained in an automated data bank; this requirement in no way limits or restricts access by the Department or other authorized Federal officials to the client's records or other records of the protection and advocacy system for purposes of carrying

out the responsibilities of their offices. It also does not limit access by parents or legal guardians of minors unless prohibited by State law, court order or the rules of attorney-client privilege.

(2) Have written policies governing access to duplication of, and release of information from the client's record; and

(3) Obtain written consent from the client, if competent, or his or her guardian, before it releases information to individuals not otherwise authorized to receive it.

[49 FR 11779, Mar. 27, 1984, as amended at 53 FR 44846, Nov. 20, 1987]

§ 1386.22 [Reserved]

§ 1386.23 Periodic reports: Protection and Advocacy System.

The State Protection and Advocacy Agency must submit:

(a) Written assurance of compliance with section 142 of the Act will be required on a one time only basis. These assurances to the Commissioner must be signed by the Governor or a State official or entity empowered by the Governor or State legislature to provide such assurance. These assurances will remain in effect unless changes occur within the State which will affect the functioning of the Protection and Advocacy system in which case an amendment is required 30 days prior to the effective date of the change. All assurances and/or amendments may be provided in a format of the State's choice and will remain in effect as long as the State receives funds under the Act.

(b) An annual report to the Commissioner describing the activities and accomplishments carried out under the system during the previous year.

(c) Quarterly financial status reports from the Protection and Advocacy Agency are due thirty (30) days after the close of each quarter. The final financial report is due two (2) years and ninety (90) days after the last day of the Federal fiscal year. These quarterly reports must be submitted until the final report is submitted for each fiscal year.

(Information collection requirements contained in paragraph (b) under control number 0980-0160 and paragraph (c) under control number 0980-0180 are approved by the Office of Management and Budget.)

[52 FR 44846, Nov. 20, 1987]

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

Federal financial participation is not allowable for:

(a) Costs incurred for activities on behalf of persons with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace; and

(b) Costs not allowed under other applicable statutes. Departmental regulations and issuances of the Office of Management and Budget.

[52 FR 44847, Nov. 20, 1987]

Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities

§ 1386.30 State plan requirements.

(a) In order to receive Federal financial assistance under this subpart, Councils and States must prepare, submit and have in effect a State plan which meets the requirements or sections 122 and 124(a) of the Act (42 U.S.C. 6022 and 6024(a)(b)) and these regulations.

(b) Failure to comply with State plan requirements may result in loss of Federal funds as described in section 127 of the Act (42 U.S.C. 6027).

(c) The State plan may be submitted in any format the State selects as long as the items contained in the Act are addressed. The plan must:

(1) Identify the program unit(s) responsible for administration of the plan within the designated State agency or agencies;

(2) Identify the priority areas selected by the Council and by the State in which 65% of Federal allotment will be expended.

(d) The State plan must be reviewed at least once every three years.

(e) The State plan must contain assurances that:

(1) The State will comply with all applicable Federal statutes and regulations in effect during the time that

the State is receiving formula grant funding;

(2) The State meets the requirements regarding individual habilitation plans as set forth in section 123 of the Act (42 U.S.C. 6023) and

(3) The human rights of developmentally disabled persons will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

(4) The State planning council has a staff assignment to assist it in carrying out its function and responsibilities identified in the Act and the staff consist of at least a director and such support staff as the State in consultation with the Council has deemed necessary.

(Information collection requirements contained in paragraph (c) under control number 0980-0162 and paragraph (e) under control number 0980-0139 are approved by the Office of Management and Budget)

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987]

§ 1386.31 Plan submittal and approval.

(a) The State plan must be submitted to the appropriate Regional Office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuances.

(b) Failure to submit an approvable State plan or amendment prior to the Federal fiscal years for which it is applicable may result in the loss of Federal financial participation. Costs resulting from obligations incurred during the period of the fiscal year for which an approved plan is not in effect are not eligible for Federal financial participation.

(c) The Commissioner must approve any State plan or plan amendment provided it meets the requirements of the Act and these regulations.

(d) Amendments to the State plan are required when substantive changes are contemplated in plan content.

§ 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial official must submit quarterly financial status reports on the programs funded under this part. These reports are due thirty (30) days after the close of each quarter. The final financial report is due two (2) years and ninety (90) days after the last day of the Federal fiscal year. The quarterly reports must be submitted until the final report is submitted for each fiscal year.

(b) By January 1 of each year an annual report shall be submitted pursuant to section 107(a) of the Act. The report may be in a format of the State's choice.

(Information collection requirements contained in paragraph (a) under control number 0980-0139 and paragraph (b) under control number 0980-0172 are approved by the Office of Management and Budget)

[52 FR 44847, Nov. 20, 1987]

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(6)(B) of the Act (42 U.S.C. 6022(6)(B)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

(b) To the maximum extent practicable, fair and equitable arrangements must include provisions for:

(1) The preservation of rights and benefits;

(2) Guaranteeing employment to employees affected by action under the plan to provide alternative community living arrangements; and

(3) Employee training and retraining programs.

(Approved by the Office of Management and Budget under control number 0980-0162)

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987]

§ 1386.34 [Reserved]

§ 1386.35 Allowable and non-allowable costs for basic State grants.

(a) Under this subpart, Federal financial participation is available in costs resulting from obligations incurred under the approved State plan for the necessary expenses of the approved State plan for the necessary expenses of the State Council, the administration and operation of the State plan, and training of personnel. and operation of the State plan, and training of personnel.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Cost incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to persons with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes. Departmental regulations or issuances of the Office of Management and Budget.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987]

§ 1386.36 Final disapproval of the State plan amendments or plan amendments.

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to the appropriate HHS Regional Office, and the Regional Office and State have been unable to resolve their differences.

(b) The Regional Office has prepared a detailed written analysis of its reasons for recommending disapproval and has transmitted its analyses and all other relevant material to the Commissioner, and has provided the State Council and State agency with copies of the material.

(c) The Commissioner, after review of the records and the recommendation of the Regional Office, has determined whether the State plan, in whole or in part, is not approvable. Notice of this determination has been sent to the State and contains appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with 45 CFR Part 1386, Subpart D.

(d) The Commissioner's decision has been forwarded to the State Council and agency by certified mail with a return receipt requested.

(e) A State has filed its request for a hearing with the Assistant Secretary for Human Development Services (ASHDS) within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the ASHDS. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities Plans, Reports, and Federal Requirements

GENERAL

§ 1386.80 Definitions.

For purposes of this subpart:

"*Assistant Secretary*" means the Assistant Secretary for Human Development Services (HDS) or a presiding officer.

ADD means Administration on Developmental Disabilities, Office of Human Development Services.

Presiding officer means anyone by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

§ 1386.81 Scope of rules.

(a) The rules of procedures in this subpart govern the practice for hearings afforded by the Department to States pursuant to sections 122, 127 and 142 of the Act. (42 U.S.C. 6022, 6027 and 6042).

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Negotiations, and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as otherwise provided in this subpart.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987]

§ 1386.82 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

§ 1386.83 Use of gender and number.

As used in this subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

§ 1386.84 Suspension of rules.

Upon notice to all parties, the Assistant Secretary may modify or waive any rule in this subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the HDS Hearing Clerk in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party's designated representative is deemed service upon the party.

PRELIMINARY MATTERS—NOTICE AND PARTIES

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State council and the designated State agency, or to the State protection and advocacy office or official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the FEDERAL REGISTER.

§ 1386.91 Time of hearing.

The hearing must be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is mailed to the State.

§ 1386.92 Place.

The hearing must be held at a date, time, and place determined by the Assistant Secretary with due regard for the convenience and necessity of the parties or their representatives.

§ 1386.93 Issues at hearing.

(a) Prior to a hearing, the Assistant Secretary may notify the State in writing of additional issues which will be considered at the hearing. That notice must be published in the FEDERAL REGISTER. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20 days after the notice was mailed, or such later date as may be agreed to by the Assistant Secretary.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Assistant Secretary finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the

Assistant Secretary must terminate the hearing.

(2)(i) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements of State plan or report on the description of the protection and advocacy system with Federal requirements, the Assistant Secretary must provide all parties other than the Department and the State (see § 1386.94(b)) with the Statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or report on the description of the protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program with the State plan or system description, or with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

(e) The issues considered at the hearing must be limited to those issues of which the State is notified as provided in § 1386.90 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and may not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 1386.94 Request to participate in hearing.

(a) The Department, the State council, the designated State agency, and the State protection and advocacy office, as appropriate, are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party must file a petition with the HDS Hearing Clerk within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and must serve a copy on each party of record at that time in accordance with § 1386.85(b). The petition must concisely state: (i) Petitioner's interest in the proceeding,

(ii) Who will appear for petitioner,

(iii) The issues petitioner wishes to address and

(iv) Whether petitioner intends to present witnesses.

(3) Any party may file comments within 5 days of receipt of such petition.

(4) The presiding officer must promptly determine whether each petitioner had the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the presiding officer may request all of the petitioners to designate a single representative, or he or she may recognize one or more of the petitioners to represent all of them. The presiding officer must give each petitioner written notice of the decision on its petition. If any petition is denied, the presiding officer must briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the HDS Hearing Clerk before the commencement of the hearing. The petition must concisely state: (i) The petitioner's interest in the hearing,

(ii) Who will represent the petitioner, and

(iii) The issues on which petitioner intends to present argument. The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(2) An amicus curiae may present a brief oral statement at the hearing at

the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It may also submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

HEARING PROCEDURES

§ 1386.100 Who presides.

(a) The presiding officer at a hearing must be the Assistant Secretary or someone designated by the Assistant Secretary.

(b) The designation of a presiding officer must be in writing. A copy of the designation must be served on all parties and amici curiae.

§ 1386.101 Authority of presiding officer.

(a) The presiding officer has the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer has all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their positions with respect to the issues in the proceeding;

(4) Administer oaths and affirmations,

(5) Rule on motions and other procedural items on matters pending before him or her, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix for the time for filing motions, petitions, briefs, or other items in matters pending before him or her,

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is a person designated by the Assistant Secretary, examiner, certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

(12) Take any action authorized by the rules in the Subpart or 5 U.S.C. 551-559; and

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a person designated by the Assistant Secretary, examiner, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether Federal financial participation should be withheld with respect to the entire State plan or the report of the system description, or whether Federal financial participation should be withheld only with respect to those parts of the program affected by such noncompliance.

§ 1386.102 Rights of parties.

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer,

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing;

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 1386.103 Discovery.

The Department and any party named in the Notice issued pursuant to § 1386.90 has the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There is no fixed rule on priority of discovery. Upon written motion, the presiding officer must promptly rule upon any objection to discovery action. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1386.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it must be presented in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what it intends to prove, may be made at hearings.

§ 1386.105 Evidence.

(a) *Testimony.* Testimony by witnesses at the hearing is given orally under oath or affirmation. Witnesses must be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, must be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination are applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record is open to examination by the parties and opportunity must be given to refute facts and arguments advanced on either side of the issues.

§ 1386.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 1386.107 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing is placed in the correspondence section of the docket of the proceeding. This material is not deemed part of the evidence or record in the hearing.

§ 1386.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcript of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed with them is filed with the Department Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts must be taken by stenotype machine and not be voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

§ 1386.109 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, constitute the exclusive record for decision.

POSTHEARING PROCEDURES, DECISIONS

§ 1386.110 Posthearing briefs.

The presiding officer must fix the time for filing posthearing briefs. This time may not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed fundings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the posthearing briefs.

§ 1386.111 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, he or she must issue a decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is a person designated by the Assistant Secretary, he or she must, within 30 days after the time for submission of posthearing briefs has expired, certify the entire record to the Assistant Secretary including recommended findings and proposed decision. The Assistant Secretary must serve a copy of the recommended findings and proposed decision upon all parties and amici.

(2) Any party may, within 20 days, file exceptions to the recommended findings and proposed decision and supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary must review the recommended decision and, within 60 days of its issuance, issue his or her own decision.

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing under sections 122, 127 and 142 of the Act that a State plan or report on the State's protection and advocacy system does not comply with Federal requirements, he or she shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the allotment will be limited to parts of the State plan or the report not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 135 of the Act that the State is not complying with requirements of the State plan or the report on the description of the State's protection and advocacy system, he or she must also specify whether Federal financial participation will not be made available to the State or whether, in the exercise of his or her discretion, Federal financial participation will be limited to categories under the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of section 138 of the Act. The Assistant Secretary's decision must be promptly served on all parties and amici.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987]

§ 1386.112 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to section 135 of the Act, the Assistant Secretary concludes that a State plan or the report on the description of the State's protection and advocacy system does not comply with Federal requirements, and the decision provides that the allotment will be authorized but limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance, the decision must specify the effective date for the authorization of the allotment.

(b) In the case of a hearing pursuant to sections 113, 133 if the Assistant Secretary concludes that the State is not complying with requirements of the State plan or report on the description of the State's protection and advocacy system, the decision that further payments will not be made to the State, or that payments will be limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected, must specify the effective date for the withholding of Federal funds.

(c) The effective date may not be earlier than the date of the decision of the Assistant Secretary and may not be later than the first day of the next calendar quarter.

(d) The provision of this section may not be waived pursuant to § 1386.84.

PART 1387—SPECIAL PROJECTS—PROJECTS OF NATIONAL SIGNIFICANCE

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to the developmentally disabled to comply with section 145 of the Act.

(b) The requirements concerning format and content of the application, submittal procedures, eligible applicants and priority areas of services will be published in program announcements in the FEDERAL REGISTER.

(c) Projects of national significance must be exemplary models and hold potential for replication.

(Pub. L. 88-164, 77 Stat. 282, as amended by Pub. L. 91-517, 84 Stat. 1316, Pub. L. 94-103, 89 Stat. 486, Pub. L. 95-802; 92 Stat 9555, Pub. L. 97-35; 95 Stat. 583 (42 U.S.C. 8000 et seq.))

[49 FR 11784, Mar. 27, 1984]

PART 1388—THE UNIVERSITY AFFILIATED FACILITIES PROGRAM

Sec.
1388.1 Definitions.
1388.2 Program criteria—purpose.
1388.3 Program criteria—administration.
1388.4 Program criteria—services.
1388.5 Program criteria—training.
1388.6 Program criteria—technical assistance.
1388.7 Program criteria—information dissemination.
1388.8 Use of program criteria for Satellite Centers.

AUTHORITY: 42 U.S.C. 6063 et. seq.

SOURCE: 52 FR 44847, Nov. 20, 1987, unless otherwise noted.

§ 1388.1 Definitions.

For purposes of this part:

Program criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Facilities program operation. The program criteria will be used for qualitative evaluation, and also include measurements of program outcome.

Qualitative criteria means desired component and attributes which are UAF program requirements for prescribed areas.

Measurements of program outcome means a specific number of outcomes in a prescribed area. Measurements of program outcome can be aggregated and reported across all UAFs or used as management and evaluation tools in individual programs.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Facilities (UAF) program. Compliance with the program criteria is a prerequisite for the minimum funding level of a UAF. However, compliance with the program criteria, does not, by itself, constitute an assurance of funding.

§ 1388.3 Program criteria—administration.

(a) *Governance.* A UAF must be an integral component of a university but maintain the autonomy required to carry out the UAF mission and provide for the mandated activities as set forth in section 102(13) and section 151 of the Act (exemplary services, interdisciplinary training, technical assistance and information dissemination). The UAF must use management practices that provide direction to professionals, and parents of persons with developmental disabilities, paraprofessionals and volunteers for the UAF. The UAF must also promote the visibility of the UAF, and the integration of the program components. Management practices must facilitate cooperative relationships both within and outside the university community that further the UAF mission, aid persons with developmental disabilities and improve the field of developmental disabilities.

(b) *University relationship.* (1) The UAF must have a written agreement or charter with the university that specifies the UAF designation as an official university component, the relationships between the UAF and other university components, the university commitment to the UAF, and the UAF commitment to the university. The written agreement or charter will be required on a one-time only basis and would remain in effect unless changes occur which affect the relationship of the UAF and the university.

(2) The UAF must be responsible to and report directly to a university administrator who will represent the interests of the UAF within the university. The administrator must support and represent the UAF in operation and planning and in the training of university students, professionals, parents and the community.

(3) The UAF must show evidence that it contributes to the university's mission in the form of public relations, university instruction, continuing education, and joint development of new programs and grants.

(c) *Administration.* (1) The UAF must be managed by a person who has adequate background in a discipline relevant to the goals of the UAF, evidence of commitment to the field of developmental disabilities, and functional competence to carry-out the mission of the UAF.

(2) Directors, administrators, and middle managers of the UAF must work with a variety of professionals and non-professionals within the university and across levels of the service system to carry-out the UAF mission.

(3) A UAF must maintain a mechanism to identify and successfully compete for funding opportunities other than those under the Act.

(d) *Organization.* (1) A UAF must be represented and fully participate in all meetings and activities of the State Planning Council that are prescribed by the Act.

(2) A UAF's mission must reflect legislative requirements, special needs of persons of various ages with developmental disabilities and the needs of those who work in the field and who are concerned about persons with developmental disabilities.

(3) A UAF must develop a plan which includes the goals, objectives and timelines for UAF services, special projects, training, technical assistance, information dissemination and research activities that includes a continuous, ongoing assessment of its program and activities.

(e) *Funding.* A UAF must maintain an annual operational budget and use accepted accounting procedures to administer funds.

(f) *Cooperative relationships.* (1) A UAF must maintain cooperative relationships with the State Developmental Disability Council and the Protection and Advocacy system.

(2) A UAF must maintain cooperative relationships with the UAF network and individuals, organizations, and universities to enhance quality of life for persons with developmental disabilities and to improve the field of developmental disabilities.

(g) *Personnel policies.* (1) In order to promote the interdisciplinary nature of the UAF mission, a UAF must have on staff, or have available, adjunct professors, consultants, or experts in a broad range of disciplines, including education, health, psychology and social work.

(2) A UAF must inform staff of and implement university policies.

(3) A UAF must supplement university policies that enhance professional growth and support research.

(4) A UAF must take affirmative action to employ and advance in employment qualified individuals with developmental disabilities.

(h) *Physical facility.* (1) A UAF must be fully accessible to the handicapped in accordance with section 504 of the Rehabilitation Act.

(2) A UAF must have adequate space to carry out the mandated activities.

(3) Space that was constructed with Federal funds must be used for its intended UAF purpose pursuant to 45 CFR 1385.5 and 1385.7.

(i) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of UAF staff that operate the center identified by name, discipline, percentage of time working on UAF grant, and percentage of time working on other activities within the university.

(2) Amount of university financial and other resources that supplement the UAF.

(3) Total amount of UAF funds which include the amount of the ADD grant and funds from all other sources.

§ 1388.4 Program criteria—services.

(a) *Exemplary Services.* A UAF must integrate exemplary services and projects into community settings. Exemplary services are based on emerging or continuing needs and new, innovative concepts or practices. These services may be provided in a service delivery site or training setting within the community, including the university. Exemplary service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Exemplary services must be extended, as appropriate, to include adult and elderly persons with developmental disabilities and also to support the independence, productivity, community integration and human rights of developmentally disabled individuals.

(b) *Community-integrated services.* The following are criteria for evaluating community-integrated services:

(1) Services and projects are scheduled at times and in places that are consistent with routine activities within the local community.

(2) Services or projects interact with and involve community members, agencies, and organizations.

(c) *Bases for services or project development.* The bases for the services or project development must be:

(1) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(2) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(d) *State-of-the-art and innovative practices.* (1) Service and project concepts and practices must facilitate and demonstrate independence for the individual, community integration, productivity and human rights.

(2) Practices that are economical, accepted by various disciplines, and highly beneficial to persons who are developmentally disabled, must be integrated within services and projects.

(3) The design of innovative cost-effective concepts and practices must be evaluated according to accepted practices of scientific evaluation.

(4) Research methods must be used to test hypotheses, validate procedures, and field test products.

(5) Exemplary service and project practices and models must be evaluated, packaged for replication and disseminated through the information dissemination component.

(e) *Demonstration and training.* (1) UAFs must disseminate information (brochures and professional articles) to State Developmental Disabilities Councils, the State Administering Agencies, the State Protection and Advocacy Agencies, other public and private agencies serving persons with developmental disabilities and private citizens. This information must describe exemplary services and projects and be made available for demonstration and training.

(2) A variety of individuals must be trained within exemplary services and projects. They include long-term and intermediate interdisciplinary trainees and inservice trainees. The latter group could include service providers, families, and administrators.

(f) *Measurements of program outcome.* Measures of program outcome include:

(1) The total number of clients served by category of service; and

(2) The amount of related research evaluation and dissemination conducted.

§ 1388.5 Program criteria—training.

(a) *Organization.* (1) To ensure quality comprehensive interdisciplinary training, professional staff representing the major disciplines of education, health, psychology and, social work, and holding appropriate university appointments, must direct the interdisciplinary training program.

(2) The focus of training must be interdisciplinary service and treatment of persons of various ages with developmental disabilities and their families.

(3) Training must be integrated with exemplary services provided by or affiliated with the UAF.

(b) *Outcome of interdisciplinary training.* (1) Training must develop competencies related to developmental characteristics and assessment of persons with developmental disabilities of various ages.

(2) Training must develop an understanding of various disciplines' roles, diagnostic and evaluation practices, and treatment procedures.

(3) Training must promote understanding and use of the values, knowledge, methods, and skills of the major professions of education, health, psychology and social work and other appropriate disciplines.

(4) Training must include training and practicum in the interdisciplinary team process.

(5) Training must address services and treatment for various groups.

(6) Optional training must address program evaluation and research methods applicable to developmental disability programs.

(7) Optional training must address leadership development issues such as policy analysis and management.

(c) *Long-term interdisciplinary training.* (1) To develop leaders in serving individuals with developmental disabilities, a UAF must recruit students of high achievement from major disciplines into a program that provides long-term training (300 or more hours) in a one-year reporting period.

(2) Each long-term trainee must have planned didactic instruction and clinical practical experiences to be undertaken in a one-year reporting period, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: prevention and detection, individual program planning and case management, developmental services, and individual and family support services.

(4) Training activities must cover at least two of the following settings: natural home, supervised living arrangements, residential treatment centers, nonresidential treatment settings, educational and employment settings.

(5) Training activities must cover a range of disabilities and impairments.

(6) Trainees must receive credit, as appropriate, for training completed at the UAF that is performed as part of a program of course work administered by the university or any of its divisions.

(7) Training activities must include:

(i) Instruction in the interdisciplinary team process,

(ii) Experiences as a team member, and

(iii) Experiences as a team leader.

(d) *Intermediate interdisciplinary training.* (1) Students who receive intermediate interdisciplinary training (160 to 299 hours) must be recruited from various disciplines to provide services to persons with developmental disabilities as a part of generic or special services.

(2) Each trainee must have planned instruction and practical experiences, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: Prevention and detection, individual program planning and case management, developmental services, and individual and family support services.

(4) Trainees must receive credit, as appropriate, for training completed at the UAF performed as part of a program of course work administered by university or any of its divisions.

(e) *Short-term special purpose interdisciplinary training.* A variety of training experiences designed to improve or expand services to persons with developmental disabilities and their families, including workships, courses, lectures, and other didactic experiences, must be provided to a variety of individuals who may or do serve individuals of various ages with developmental disabilities.

(f) *Training provided by the UAF shall be relevant to community needs.* (1) A UAF must determine and set priorities for training based on the needs of the community.

(2) Training priorities must be established in cooperation with State Developmental Disabilities councils, State manpower councils, the State Mental Retardation/Developmental Disability Agency and other relevant local, State and Federal agencies.

(3) Training priorities must consider national manpower needs, with particular attention to those serving adult and elderly persons with developmental disabilities.

(g) *The interdisciplinary training program must be evaluated to improve it.* (1) Student achievement of program goals must be evaluated.

(2) The degree to which the program is achieving its stated goals must be evaluated.

(3) Evaluation must be conducted to develop and assess effective interdisciplinary strategies and procedures.

(4) The extent to which training is satisfactorily addressing the needs of the community must be systematically evaluated.

(h) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of long-term interdisciplinary trainees; number of intermediate interdisciplinary trainees; and number of special trainees completing training.

(2) Number of workshops or training sessions provided; and

(3) Number and type of disciplines of participants involved in each category of training.

§ 1388.6 Program criteria—technical assistance.

(a) *Technical assistance.* A UAF must provide technical assistance to individuals and organizations responsible for the independence, productivity, community integration, and human rights of individuals with developmental disabilities. Technical assistance must be based on state-of-the-art practices and new, innovative practices and models found within exemplary services. Technical assistance must also be based on special needs or emerging problems that are identified by the UAF, organizations or individuals con-
cerned with persons with developme
tal disabilities.

(b) *Established and planned techr
cal assistance.* (1) Technical assistan
must be an integral part of a UAF.

(2) Adequate resources and perso
nel must be assigned.

(3) Personnel assigned must be spe
fied and be either UAF staff w
solely develop technical assistan
products and provide technical assi
ance; or a roster of experts that cou
be used through consultation.

(4) The UAF must identify potent
target audiences and needs.

(5) The UAF must have a syste
(electronic mail, mailing list) to infor
target audiences about technical
sistance availability.

(6) The UAF must evaluate and i
prove technical assistance on an ong
ing basis.

(c) *Technical assistance training.* (
Technical assistance activities must
used as a training opportunity f
UAF trainees.

(2) The experience, observatio
and testing of the technical assistan
provision must be used to refine UA
training.

(d) *Measurements of program o
come.* Measures of program outco
include:

(1) Number of government agenci
service providers and professional
ganizations to whom the UAF provid
technical assistance.

(2) Total hours of technical assi
ance provided by type (e.g., wor
shops, consultation, inservice trainin
and topic.

(3) Number of trainee hours involv
in technical assistance activities.

§ 1388.7 Program criteria—informati
dissemination.

(a) *Information and disseminatio*
A UAF must disseminate informati
products that enhance the quality
life of persons with developmental d
abilities. The UAF must dissemina
information that is based on exempl
ry services and projects, interdiscip
nary training, UAF products and cu
rent developments related to the fie
of developmental disabilities. Inform
tion shall be disseminated to targ
audiences within the field of develo

mental disabilities, to persons with developmental disabilities and their families, and to other concerned persons within the general public.

(b) *Information and Dissemination Plan.* (1) An information component or activities must be an integral part of a UAF.

(2) Adequate resources and personnel must be assigned to information dissemination objectives.

(c) *Target audiences for information dissemination.* (1) Specific target audiences must be identified for information dissemination. Target audiences may include persons with developmental disabilities and their families, service providers, administrators, policymakers, peers, researchers, and the general public.

(2) UAFs must have a system (mailing lists, electronic mail, etc.) to disseminate information to target audiences.

(3) A UAF must use existing systems (the UAF network, professional journals, publishers) to disseminate information.

(d) *Information products.* (1) Information products must be developed and packaged (articles, procedures manuals newsletters) for specific target audiences.

(2) Information products must be based on innovative ideas and practices identified or developed within exemplary services, interdisciplinary training, research, evaluation and technical assistance activities.

(3) Information products must be based on current developments in the field of developmental disabilities and must facilitate independence, productivity and integration into the community for persons of various ages with developmental disabilities.

(e) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of individuals or organizations receiving information about the UAF's exemplary services, demonstrations, training, technical assistance, product and information availability;

(2) Number of individuals or organizations receiving information on current research and new, innovative practices by other individuals and organizations;

(3) Number of researchers and government agencies to whom information was presented about current service, training, and research needs;

(4) Number of individuals and agencies receiving information related to the UAF mission; and

(5) Number of individuals (professionals, consumers, administrators, policymakers, the general public) presented information as part of symposia or special purpose presentations.

§ 1388.8 Use of program criteria for Satellite Centers.

A Satellite Center must specify which activities, as defined in section 102(12) of the Act, it chooses to perform. The satellite center must comply with the program criteria in § 1388.3 of this part and will be subject to the program criteria which correspond to the activities it has selected under section 102(12) of the Act.

SUBCHAPTER J—[RESERVED]

SUBCHAPTER K—STANDARD SETTING REQUIREMENTS FOR MEDICAL AND NONMEDICAL FACILITIES WHERE SSI RECIPIENTS RESIDE

PART 1397—STANDARD SETTING REQUIREMENTS FOR MEDICAL AND NONMEDICAL FACILITIES WHERE SSI RECIPIENTS RESIDE

Sec.
1397.1 Scope.
1397.5 Definitions.
1397.10 Responsibilities of States.
1397.20 Responsibilities of designated standard-setting authorities.

AUTHORITY: Secs. 1102 and 1616(e) of the Social Security Act (42 U.S.C. 1302 and 1382(e)).

SOURCE: 48 FR 54185, Nov. 30, 1983, unless otherwise noted.

§ 1397.1 Scope.

This part requires States to create or designate one or more State or local authorities to establish, maintain, and ensure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which, as determined by the State, a significant number of recipients of Supplemental Security Income (SSI) benefits resides or is likely to reside. SSI residents who live in relevant facilities which violate any of the standards will be subject to a reduction in their SSI payments by the Social Security Administration. The reduction will be in an amount equal to any State supplementary benefit or other payment made by the State for any medical or remedial care provided them by the facility.

§ 1397.5 Definitions.

For purposes of this part:

(a) Any category of institutions, foster homes, and group living arrangements means residential facilities which: (1) Provide both room and board and continuous protective oversight to the residents; and

(2) Are non-medical or medical facilities of any size (other than those certified for participation in the Medicaid or Medicare programs) which are publicly or privately operated on a nonprofit or for-profit basis.

(b) Medical or remedial care means care directed toward the correction or amelioration of a medical condition which has been diagnosed as such by a licensed medical practitioner operating within the scope of medical practice as defined by State law, and the care is provided by or under the direct supervision of a medical practitioner or other health professional licensed by the State or credentialed by the appropriate professional organization.

§ 1397.10 Responsibilities of States.

Each State shall—

(a) Determine the kinds of residential facilities (as defined under § 1397.1) in which a significant number of SSI recipients resides or is likely to reside;

(b) Create or designate one or more State or local authorities to establish, maintain, and ensure the enforcement of any standards for the residential facilities identified in accordance with paragraph (a) of this section;

(c) Annually make available for public review a summary of the standards established in accordance with paragraph (b) of this section, including the name and address of each standard-setting authority from which interested individuals may obtain further information about full standards, enforcement procedures, waivers of standards and violations;

(d) Assure that each standard-setting authority complies with the requirements of § 1397.20;

(e) Annually certify to the Assistant Secretary for Human Development Services that the State meets the requirements of this Part. The certification shall be in the form of a factual statement signed by the Chief Executive Officer of the State or his or her designee and submitted within the first quarter of each Federal fiscal year; and

(f) Send a summary of each standard for each kind of facility, and a summary of enforcement procedures to the Assistant Secretary for Human Development Services in the first quarter of the first fiscal year following March 31, 1983. Thereafter, only new or revised summaries of standards or procedures are required. The address for the Assistant Secretary for Human Development Services is 200 Independence Avenue, SW., Washington, DC 20201.

(g) Designate an official to assist in the implementation of the requirements of this part.

(Approved by the Office of Management and Budget under control number 0980-0154)

§ 1397.20 Responsibilities of designated standard-setting authorities.

Each standard-setting authority shall:

(a) *Establish standards.* (1) The standards shall be appropriate to the needs of the SSI recipients residing in the facilities and to the character of the facilities involved. In addition, they shall govern such matters as:

(i) Admission policies (including a continuous needs assessment and referral to appropriate resources);

(ii) Safety;

(iii) Sanitation (cleanliness and hygienic procedures); and

(iv) Protection of civil rights (under the United States Constitution, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other relevant provisions of Federal and State laws).

(2) If a standard-setting authority has standards already in place that cover the subject areas listed in paragraph (a)(1) of this section, the standards meet the requirements of this paragraph.

(3) Under the requirements of this paragraph, the authority may provide for waivers of a standard under specified criteria.

(4) The authority shall notify the public and providers about the need for affected facilities to meet its standard.

(b) *Establish procedures for enforcing the standards.* (1) The enforcement procedures shall include:

(i) Periodic inspection of facilities;

(ii) Provision of technical assistance; and

(iii) Use of a warning system which provides for an opportunity for a deficient facility to comply and for the residents to move out if the facility fails to do so.

(2) The standard-setting authority shall establish specific time periods:

(i) For a deficient facility to carry out a plan approved by the standard-setting authority to correct any violation of a standard which cannot be waived; and

(ii) For the standard-setting authority, if the facility fails to comply, to arrange for informing in writing all residents of the facility (including, where appropriate, the families, guardians, or representative payees of SSI residents) of the standard which the facility does not meet, and of the time period during which residents may relocate if they wish before the authority reports the deficient facility to the Social Security Administration. The standard-setting authority shall also provide all residents with a list of approved facilities and agencies which will help them move if they wish. The purpose is to let the residents know they do not have the protection of the standard, and to give them time and assistance to move if the absence of the standard endangers them or causes a reduction in their SSI benefit.

(c) *Report deficient facilities to the Social Security Administration.* (1) At the conclusion of the relevant time period(s) given a deficient facility to correct violation of a standard or for residents to move out of a facility, as described in paragraph (b)(3) of this section, each designated standard-setting authority shall report to the appropriate Regional Office of the Social Security Administration the name and address of any facility which no longer meets the standards and the effective date of the violation. The purpose is to enable the Social Security Administration to reduce SSI benefits to SSI residents living in a facility in violation of standards, in accordance with the requirements of section 1616(e) of the Social Security Act.

(2) If and when a deficient facility again meets the standards, the stand-

ard-setting authority shall notify the Social Security Administration of the effective date of its approval of the facility.

(d) *Maintain and make records available*—(1) *Maintenance of records.* Each authority shall:

(i) Keep a record of the details of each violation of a standard by a facility; and

(ii) If a standard is waived, maintain a record including the name and address of each facility granted a waiver, the standard waived, and the justification for waiving it.

(2) *Availability of records to the public.* Each authority shall make available with or without charge to interested individuals a single copy of:

(i) A complete set of standards for each type of facility;

(ii) The procedures used in the Sta
to insure the enforcement of star
ards;

(iii) The list of facilities (name a
address) that have been granted wa
ers of each standard, including the j
tification for the waiver; and

(iv) The list of facilities (name a
address) found in violation of a star
ard, including the details of each vio
tion.

(3) The authority shall provide t
official designated in accordance wi
§ 1397.10(g), a summary of each star
ard for each kind of facility and e
forcement procedures.

(Approved by the Office of Managem
and Budget under control number 09
0154)

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PART 1600—DEFINITIONS

AUTHORITY: 42 U.S.C. 2996.

§ 1600.1 Definitions.

As used in these regulations, Chapter XVI, unless otherwise indicated, the term—

"Act" means the Legal Services Corporation Act, Pub. L. 93-355 (1974), as amended, Pub. L. 95-222 (1977), 42 U.S.C. 2996-29961.

"Appeal" means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

"Attorney" means a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where assistance is rendered.

"Control" means the direct or indirect ability to determine the direction of management and policies or to influence the management or operating policies of another organization to the extent that an arm's-length transaction may not be achieved.

"Corporation" means the Legal Services Corporation established under the Act.

"Director of a recipient" means a person directly employed by a recipient in an executive capacity who has overall day-to-day responsibility for management of operations by a recipient.

"Eligible client" means any person determined to be eligible for legal assistance under the Act, these regulations or other applicable law.

"Employee" means a person employed by the Corporation or by a recipient, or a person employed by a subrecipient whose salary is paid in whole or in major part with funds provided by the Corporation.

"Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client from public funds or from an opposing party.

"Financial assistance" means annualized funding from the Corporation granted under section 1006(a)(1)(A) for the direct delivery of legal assistance to eligible clients.

"Legal assistance" means the provisions of any legal services consistent with the purposes and provisions of the Act or other applicable law.

"Outside practice of law" means the provisions of legal assistance to a client who is not eligible to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluations.

"Political" means that which relates to engendering public support for or opposition to candidates for public office, ballot measures, or political parties, and would include publicity or propaganda used for that purpose.

"President" means the President of the Corporation.

"Public funds" means the funds received directly or indirectly from the Corporation or a Federal, State, or local government or instrumentality of a government.

"Recipient" means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the Act.

"Staff attorney" means an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

"Tribal funds" means funds received from an Indian tribe or from a private foundation for the benefit of an Indian tribe.

[49 FR 21327, May 21, 1984, as amended at 51 FR 24827, July 9, 1986]

PART 1601—BY-LAWS OF THE LEGAL SERVICES CORPORATION

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1601.42 Seal.

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Subpart J—Indemnification

1601.44 Indemnification.

Subpart K—Amendments

1601.45 Amendments.

AUTHORITY: Sec. 1008(e), 88 Stat. 387 (42 U.S.C. 2996g(e)).

SOURCE: 49 FR 23050, June 4, 1984, unless otherwise noted.

Subpart A—Nature, Powers, and Duties of Corporation; Definitions

§ 1601.1 Nature of the corporation.

Legal Services Corporation is the corporation established by section 1003 of the Legal Services Corporation Act, 42 U.S.C. 2996b. The Act establishes the Corporation in the District of Columbia as a private, nonmembership, nonprofit corporation for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Except as otherwise specifically provided in the Act, the Corporation shall not be considered a department, agency, or instrumentality of the United States Government.

§ 1601.2 Powers and duties.

The powers and duties of the Corporation are as set forth in the Act. The powers of the Corporation include, to the extent consistent with the Act, the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, D.C. Code Title 29, Chapter 10, other than the power to cease corporate activities.

§ 1601.3 Definitions.

As used in these By-Laws, except where the context otherwise requires—

(a) "Act" means the Legal Services Corporation Act, 42 U.S.C. 2996-2996(1), Pub. L. 93-355, approved July 25, 1974, 88 Stat. 378, as amended by Pub. L. 95-222, approved December 28, 1977, 91 Stat. 1619;

(b) "Board" means the Board of Directors of the Corporation;

(c) "Corporation" means the Legal Services Corporation established by section 1003 of the Act, 42 U.S.C. 2996(b);

(d) "Director" means a voting member of the Board of Directors appointed by the President of the United States;

(e) The pronouns "he," "him," and "his" mean, respectively, "he or she," "him or her," and "his or her";

(f) "Member of the Board" means a Director or the President of the Corporation;

(g) "Member of the immediate family" means, with respect to any individual, a spouse, child, parent, brother, or sister of such person, or a spouse or relative of any of the foregoing who has the same home as such person;

(h) "Person" means an individual, corporation, association, partnership, trust, or other entity;

(i) "Recipient" means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the Act;

(j) "Telegraph" for purposes of these By-Laws refers to any means of record communication for transmitting messages to a distant point including, but not limited to, express mail, bonded carrier with one day service, electronic communication capable of transmitting a written message.

Subpart B—Offices and Agents

§ 1601.4 Principal office.

The Corporation shall maintain its principal office in the District of Columbia.

§ 1601.5 Agent.

The Corporation shall maintain a designated agent in the District of Columbia to accept service of process for the Corporation.

§ 1601.6 Other offices and agents.

The Corporation may also have offices and agents at such other places, either within or without the District of Columbia, as the business of the Corporation may require.

Subpart C—Board of Directors

§ 1601.7 General powers.

The property, affairs, and business of the Corporation shall be managed by and under the direction of the Board, subject to the provisions of the Act.

§ 1601.8 Number, terms of office, and qualifications.

(a) The Board shall consist of eleven Directors. The President of the Corporation shall serve as a non-voting *ex officio* member of the Board. The Directors shall be appointed by the President of the United States, by and with the advice and consent of the Senate. No more than six of the Directors shall be of the same political party. A majority of the Directors shall be members of the bar of the highest court of a state. None of the Directors shall be a full-time employee of the United States.

(b) The term of office of each Director shall be three years. Each Director shall continue to serve until his successor is appointed and qualified. The term of each Director shall be computed from the date of termination of the preceding term. Any Director appointed to fill a vacancy occurring prior to the expiration of the term for which such Director's predecessor was appointed shall be appointed for the remainder of such term. No Director shall be reappointed to more than two consecutive terms immediately following such Director's initial term.

(c) As of the date on which these By-Laws, as revised, shall become effective, the terms of the Directors of the Board shall expire on the following dates: The terms of six Directors of the Board shall expire on July 13, 1987 the terms of the other five Directors of the Board shall expire on July 13, 1986.

[49 FR 23050, June 4, 1984, as amended at 50 FR 30712, July 29, 1985]

§ 1601.9 The Chairman and Vice Chairman of the Board.

(a) Annually or at such other time as there may be vacancies in such offices, the Board shall elect a Chairman and

Vice Chairman of the Board from among its voting members, each of whom shall serve at the pleasure of the Board, or until his successor has been duly elected in his stead, or until he shall resign or otherwise vacate his office or Board membership.

(b) The Chairman of the Board shall, if present, preside at all meetings of the Board, shall carry out all other functions required of him by the Act and these By-Laws, and shall perform such other duties as from time to time may be assigned to him by the Board.

(c) The Vice Chairman of the Board shall, in the absence of the Chairman, preside at meetings of the Board and shall, for purposes of these By-Laws, be considered the Chairman of any meeting at which he so presides. In addition, the Vice Chairman shall carry out all other functions required of him by these By-Laws and shall perform such other duties as from time to time may be delegated to him by the Chairman or assigned to him by the Board.

§ 1601.10 Qualification.

A person shall be deemed to have qualified as a Director when upon appointment or selection, as the case may be, he has affirmed or executed a statement to discharge his duties faithfully, which statement shall be in such form as provided by the Board.

§ 1601.11 Outside interests of directors.

(a) No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization, other than the Legal Services Corporation, with which such member is then associated or has been associated within a period of two years. For the purposes of this paragraph:

(1) A member of the Board shall be deemed "associated" with a firm or organizaton if he (i) is serving or has served within the past two years as a Director, officer, trustee, employee, consultant, attorney, agent or partner thereof, or in any of such other capacities as the Board may from time to time determine, (ii) is negotiating or has any arrangement concerning prospective employment therewith or, (iii) has or has had, within the past two years, any direct or indirect financial or ownership interest therein; and

(2) The term "member of the Board" includes a member of the immediate family of a member of the Board. If a member of the Board violates this paragraph in connection with any transaction, he may be liable to the Corporation for damages.

(b) Pursuant to procedures to be established by the Board from time to time, each member of the Board, upon assuming office and at least annually thereafter, shall file with the Secretary a statement identifying any firm or organization with which he is then or has been within the past two years associated (as defined in paragraph (a) of this section) and the nature of the association. In the event the association is a result of a financial or ownership interest, that fact shall be reflected in the statement, but the member need not reveal the degree of financial interest. Such statements shall be available for public inspection.

§ 1601.12 Removal.

(a) A Director may be removed by a vote of seven Directors at a meeting of the Board, or by a vote of two-thirds of the number of Directors where the total number of Directors then in office is less than eleven, for persistent neglect of or inability to discharge duties, for malfeasance in office, or for offenses involving moral turpitude, and for no other cause.

(b) When a Director shall fail to attend three consecutive meetings of the Board, or a majority of the meetings held during a one-year period, the Secretary shall notify him in writing that the agenda for the next meeting of the Board will include the question of whether he should be removed for persistent neglect of or inability to discharge his duties.

(c) Except as provided in paragraph (b) of this secton, the Board shall consider whether a Director shall be removed only when five or more Directors, or at least 40 percent of the Directors where the total number of Directors then in office is less than eleven, have stated in writing that they believe there is reasonable cause for such action, giving specific allegations in support of such belief.

(d) A Director may not be removed unless (1) notice of the basis of removal has been given to such Director at least thirty days before a vote is taken concerning his removal and (2) the Director has been afforded the opportunity to contest his removal by making written submissions to the other members of the Board and by appearing in person, with or without counsel present, at the meeting at which the vote concerning removal is taken.

§ 1601.13 Resignation.

A Director may resign at any time by giving written notice of his resignation to the President of the United States, with a copy being sent to the President of the Corporation and to the Chairman of the Board. A resignation shall take effect at the time received by the President of the United States, unless another time is specified therein. The acceptance of a resignation shall not be necessary to make it effective.

§ 1601.14 Compensation.

Except to the extent Legal Services Corporation is restricted by Pub. L. 98-166 and 98-411 or subsequent appropriation or authorizing acts, Directors shall be entitled to receive compensation at appropriate rates prescribed by the Board not in excess of the per diem equivalent of the rate of Level V of the Executive Schedule, specified from time to time in section 5316 of Title 5 U.S.C., for their services on the Board or on any committee thereof, and reimbursement for travel, subsistence, and other expenses necessarily incurred in connection therewith. A Director shall not serve the Corporation in any other capacity or receive compensation for such services, except as authorized by the Board. In no event shall a Director receive compensation in more than one capacity.

[49 FR 23050, June 4, 1984, as amended at 50 FR 30712, July 29, 1985]

Subpart D—Meetings of Directors

§ 1601.15 Meetings.

(a) Meetings of the Board shall be held at least four times a year. An annual meeting shall be held on the last Friday of January of each year at such hour and place as shall be determined by a majority of the Directors. All other meetings shall be held at such intervals and at such locations as shall be determined by a majority of Directors. Notice of the place and time of a meeting shall be mailed to each Director at least seven (7) days before the date of the meeting or shall be telegraphed, charges prepaid, at least five (5) days before the date of the meeting, unless a majority of the Directors determines that Corporation business requires a meeting on fewer than the specified days notice. In that event, notice shall be mailed or telegraphed at the earliest practicable time.

(b) In the event a majority of the Directors of the Board agrees to postpone a meeting, notice of such postponement shall be mailed to each director at least five (5) days before the scheduled date for such meeting or shall be telegraphed or delivered at least three days before such scheduled date. In the event a majority of the members of the Board agrees to reschedule a meeting to a date in advance of the scheduled date for such meeting, notice of such rescheduling shall be mailed to each Director at least twenty-one days before the rescheduled date for such meeting or shall be telegraphed or delivered at least fifteen days before such rescheduled date. Every such notice shall specify the place, date, and hour of the rescheduled meeting.

(c) If a quorum of the Directors are physically present at a meeting of the Board, other Directors may participate in a meeting of the Board by means of conference telephone or by any means of communication by which all persons participating in the meeting are able to hear one another and by which interested members of the public are able to hear and identify all persons participating in the meetings.

[49 FR 23050, June 4, 1984, as amended at 50 FR 30712, July 29, 1985]

§ 1601.16 Special meetings.

Special meetings of the Board may be called by the Chairman of the Board or may be called upon receipt by him of a written request from at least 40 percent of the Directors then in office or from the President of the Corporation and at least 30 percent of the Directors then in office. Notice of any such meeting shall be mailed to each Director at least seven days before the date on which the meeting is to be held. Notice may also be sent to each Director by telegraph, charges prepaid, or delivered to him but, in either case, not later than the fifth day before the date on which the meeting is to be held. A majority of the Directors may determine that Corporation business requires a meeting on fewer than the specified days notice. In that event, notice shall be given at the earliest practicable time. Every such notice shall specify the place, day, and hour of the meeting and the general nature of the business to be transacted.

[49 FR 23050, June 4, 1984, as amended at 50 FR 30713, July 29, 1985]

§ 1601.17 Notice and waiver of notice.

(a) Notice of a meeting of the Board when mailed shall be deemed given when deposited with the United States Postal Service, first-class postage paid, addressed to the Director at his address appearing on the books of the Corporation or supplied by him for the purpose of this notice. Notice which is delivered to a Director shall be delivered at such address to a person having apparent authority to accept such delivery. Notice by telegraph shall be sent, charges prepaid, to such address.

(b) A waiver of notice of a meeting must be in writing and signed by the Director entitled to such notice and submitted by that Director to the Chairman of the Board or the Secretary of the Corporation, whether before or after the time of such meeting. Attendance of a Director at any meeting shall constitute a waiver by him of notice of such meeting, except where he attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

§ 1601.18 Agenda.

For each meeting, the Chairman of the Board or the President of the Corporation shall cause to be prepared a working agenda of matters to be discussed at the meeting, and shall include the agenda in the notice of the meeting required to be sent to all Directors by §§ 1601.15 and 1601.16. Any matters appearing on the agenda which the Chairman of the Board or the President believes should be discussed in an executive session in accordance with § 1601.22 shall be so noted.

§ 1601.19 General notice.

(a) Except as otherwise specifically provided in these By-Laws, general notice of any meeting of the Board shall be mailed to each Director at least seven (7) days before the date of the meeting, or shall be telegraphed or delivered not later than five (5) days before the date of the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than the specified days notice. In that event, general notice shall be given at the earliest practicable time.

(b) General notice shall include: (1) The time, place, and subject matter of the meeting;

(2) Whether the meeting or a portion thereof will be closed to public observation; and

(3) The name and telephone number of a person designated to respond to requests for information about the meeting. An amended announcement shall be issued of any change in the information provided by a general notice in accordance with the requirements of 5 U.S.C. 552b and Corporation regulations issued thereunder. Notice of any such change shall be given in the manner prescribed by regulation and at the earliest practicable time.

(c) General notice shall be posted at the offices of the Corporation in an area to which the public has access and filed for publication in the FEDERAL REGISTER. Reasonable effort shall be made to send the notice to the governing board and the program director of every recipient.

[49 FR 23050, June 4, 1984, as amended at 50 FR 30713, July 29, 1985]

§ 1601.20 Organization of Directors meetings.

At each meeting of the Board, the Chairman of the Board, or in his absence the Vice Chairman, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board. In the absence from any such meeting of the Secretary, the chairman of the meeting shall appoint a person to act as secretary of the meeting.

§ 1601.21 Quorum, manner of acting, and adjournment.

(a) At each meeting of the Board, the presence of a majority of the Directors in office, but in no event less than four (4) Directors, shall constitute a quorum for the transaction of business. Except as otherwise specifically provided by law or these By-Laws, the vote of a majority of the Directors present at the time of a vote, provided that a quorum is present at such time, shall be the act of the Board. If a quorum is present when a meeting is convened at which an action is subsequently voted upon, the action shall be the valid action of the Board, unless a Director suggests the absence of a quorum and there is, in fact, no quorum then present. A Director who is present at a meeting of the Board but who is required to abstain from participation in the vote upon any matter, whether he remains in the meeting or withdraws therefrom during the vote, may be counted for purposes of determining whether or not a quorum is present, and if a quorum is present, the vote of a majority of the then voting Directors shall be the act of the Board.

(b) A majority of the Directors present at a duly convened meeting, whether or not they shall comprise a quorum, may temporarily adjourn the meeting. Whenever a meeting is temporarily adjourned to a date not more than five business days following such adjournment, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted thereat otherwise than by an announcement at the meeting at which such adjournment is taken.

(c) Each Director shall be entitled to one vote. Voting rights of Directors may not be exercised by proxy.

§ 1601.22 Public meetings; executive sessions.

All meetings of the Board shall be open to the public unless a majority of all of the Directors in office determines by a recorded vote that consideration of a specific matter should be closed to public observation pursuant to the Corporation's regulations implementing 5 U.S.C. 552b. That part of the meeting closed to the public shall be known as an executive session. The Chairman of the meeting shall announce the general subject of the executive session prior thereto.

[49 FR 23050, June 4, 1984, as amended at 50 FR 30713, July 29, 1985]

§ 1601.23 Public participation.

The Board welcomes written and other communication from members of the public.By written request in advance of a meeting, members of the public may seek to be invited by the Chairman to address that meeting. Other members of the public may address a meeting of the Board upon invitation of the Chairman of the meeting, under terms and conditions established by him, unless the Board otherwise directs.

[49 FR 23050, June 4, 1984, as amended at 50 FR 30713, July 29, 1985]

§ 1601.24 Emergency proceedings.

If, in the opinion of the Chairman, the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting that the Chairman or presiding officer of the Board shall have the authority to have such members of the public who are responsible for such acts or conduct removed from the meeting.

[50 FR 30713, July 29, 1985]

§ 1601.25 Minutes.

The minutes of each meeting of the Board, including an executive session, shall record the names of the Directors present, the actions taken and the result of each vote. If there is a division on a vote, the minutes shall record the vote of each Director. Minutes shall reflect discussions held in executive session, including as much information as possible about those discussions without compromising the purpose for which such meeting was closed to the public. A copy of the minutes of each meeting shall be supplied to each Director in advance of the next meeting and shall be presented for approval by the Board at such meeting. The minutes of each meeting shall be available for inspection by the public in the form approved by the Directors.

§ 1601.26 Action by directors without a meeting.

Any action which may be taken at a meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by all of the Directors and general notice of the proposed action is published in the manner prescribed by § 1601.19 on or before the date when such consents are first solicited. Any such action so taken shall be included on the agenda of the next meeting of the Board for discussion, ratification, or such other action as may be indicated by the circumstances.

Subpart E—Committees

§ 1601.27 Establishment and appointment of committees.

The Board has established the following permanent committees: Audit and Appropriations Committee; Operations and Regulations Committee; and Provision for the Delivery of Legal Services Committee. The Board may by resolution of a majority of the Directors in office establish (and thereafter dissolve) such other executive, standing, or temporary committees as the Board may deem appropriate to perform such functions as it may from time to time designate. The
authority of any such committee sh
expire at the time specified in su
resolution. The Board may appoint D
rectors to serve on such committe
including one to serve as the cha
man, or may delegate to the Chairm
of the Board the authority to ma
such appointments. A person appoin
ed as a member of the committee sh
serve only at the pleasure of t
Board. Each committee shall cons
of two or more Directors. The Cha
man of the Board shall be an *ex offic*
voting member of each committee.

§ 1601.28 Committee procedures.

(a) Except as otherwise provided
these By-Laws or in the resolution e
tablishing the committee, a majori
of the voting members thereof, or on
half of such members if their numb
is even, shall constitute a quorum; pr
vided, that if the Chairman of th
Board is present, he may be count
for quorum purposes. The vote of
majority of the voting membe
present at the time of a vote (or on
half of such members if their numb
is even), if a quorum is present at suc
time, shall be the act of the commi
tee. Meetings of each committee sha
be called by the chairman of the com
mittee or any two members of th
committee with notice thereof provid
ed to each committee member, includ
ing the Chairman of the Board.

(b) Notice of a committee meetin
shall be provided to members of th
committee in the manner required fo
notice of special meetings of the Boar
by § 1601.16 and § 1601.17(a). Notic
may be waived in the manner de
scribed in § 1601.17(b). The agenda fo
the meeting shall be prepared in ac
cordance with § 1601.18, and genera
notice of the meeting shall be given i
accordance with § 1601.19.

(c) All meetings of a committee shal
be open to the public unless a majorit
of all of the Directors then in offic
determine by a recorded vote to close
meeting or any portion of a meeting t
public observation pursuant to th
Corporation's regulations implementing 5 U.S.C. 552b.

(d) Minutes shall be kept of each
committee meeting in the manner de
scribed in § 1601.25. The minutes shal

be available for inspection by the public.

(e) Any Director and the President of the Corporation shall have access to the records of any committee irrespective of whether he is a member of the committee.

Subpart F—Officers

§ 1601.29 Officers.

The officers of the Corporation shall be a President, a Vice President, a Secretary, a Treasurer, a Comptroller and such other officers as the Board determines to be necessary. The President of the Corporation shall be elected by a majority of the Directors in office. Other officers shall be appointed by the President after consultation with the Board. The officers shall have such authority and perform such duties, consistent with the Act and these By-Laws, as may from time to time be determined by the Board or, with respect to the other officers, by the President of the Corporation consistent with any such determination of the Board. The President of the Corporation shall provide supervision and direction to the other officers in the performance of their duties.

§ 1601.30 Appointment, term of office, and qualifications.

The President of the Corporation shall be elected for a term not to exceed three years. Each officer of the Corporation other than the President shall be appointed for a term not to exceed three years. An officer shall be elected or appointed whenever a vacancy arises. Each officer shall hold his office until his successor shall have been duly elected or appointed in his stead or until he shall resign or shall have been removed in the manner provided in § 1601.31. Any two offices may be held by the same person, except the offices of the President of the Corporation and Secretary.

§ 1601.31 Removal.

The President of the Corporation may be removed by a majority of the Directors in office, and any other officer may be removed by the President after consultation with the Board, but any such removal shall be without prejudice to the contract rights, if any, of the person so removed.

§ 1601.32 Resignation.

Any officer may resign at any time by giving a written notice of his resignation to the Chairman of the Board. An officer other than the President shall also submit written notice of his intention to resign to the President. Such resignation shall take effect at the time received, unless another time is specified therein. The acceptance of such resignation shall not be necessary to make it effective.

§ 1601.33 The President.

(a) The President of the Corporation shall be its Chief Executive Officer and shall have the responsibility and authority, in accordance with the Act, rules and regulations promulgated pursuant to the Act and these By-Laws, subject to the direction of and policies established by the Board, for (1) the day-to-day administration of the affairs of the Corporation;

(2) The appointment of such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation and the removal of such employees;

(3) The making of grants and the entering into of contracts; and

(4) The exercise of such other powers incident to the office of the President of the Corporation and the performance of such other duties as the Board may from time to time prescribe.

(b) The President of the Corporation shall be a member of the bar of the highest court of a state and shall be a nonvoting *ex officio* member of the Board of Directors.

§ 1601.34 The Vice President.

The Vice President shall have such powers and perform such duties as the President may from time to time prescribe, consistent with any such determinations of the Board. In the absence of and upon delegation by the President, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of, and shall be subject to all restrictions upon, the President.

§ 1601.35 The Secretary.

The Secretary shall (a) ensure that all notices are duly given in accordance with the Act and these By-Laws;

(b) Be the custodian of the seal of the Corporation and affix such seal to all documents the execution of which is authorized by the Board or by any officer or employee of the Corporation to whom the power to authorize the affixing of such seal shall have been delegated;

(c) Keep, or cause to be kept, in books provided for the purpose, minutes of the meetings of the Board;

(d) Ensure that the books, reports, statements and all other documents and records required by law are properly kept and filed;

(e) Sign such instruments as require the signature of the Secretary; and

(f) In general, perform all the duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him.

§ 1601.36 The Treasurer.

The Treasurer shall (a) have charge and custody of, and be responsible for, all funds and securities of the Corporation and (with the exception of petty cash) deposit all such funds and securities in such banks, trust companies or other depositaries as shall be selected in accordance with the provisions of these By-Laws;

(b) Receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever;

(c) Sign such documents as shall require the signature of the Treasurer;

(d) Render to the Board at each meeting of all of the Directors in office and at such times as the Board may require a report on the financial condition of the Corporation; and

(e) In general, perform all the duties incident to the Office of Treasurer and such other duties as from time to time may be assigned to him. The Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such sureties as the Board shall determine.

§ 1601.37 The Comptroller.

The Comptroller shall keep or ca
to be kept full and correct records
accounts of the business, transacti
receipts and disbursements of the
poration and, at all reasonable ti
shall exhibit such records and
counts to any Director upon appl
tion at the office of the Corpora
where such records are kept, and s
perform all the duties incident to
Office of Comptroller and such ot
duties as from time to time may be
signed to him.

§ 1601.38 Compensation.

Except as otherwise provided
Pub. L. 98-166, 98-411 or subsequ
legislation, the President shall be c
pensated at rates determined by
Board, but not to exceed the rat
Level V of the Executive Sche
specified in section 5316 of Titl
U.S.C. The compensation of each
cer other than the President shal
fixed by the President, after consu
tion with the Board, at a rate no
exceed the rate of Level V of the E
utive Schedule referenced above.
officer of the Corporation may rec
any salary or other compensation
services from any sources other t
the Corporation during his period
employment by the Corporat
except as authorized by the Board.

[49 FR 23050, June 4, 1984, as amende
50 FR 30713, July 29, 1985]

§ 1601.39 Prohibition against using po cal test or qualification.

No political test or political qua
cation shall be used in selecting,
pointing, promoting of taking
other personnel action with respec
any officer, agent of employee of
Corporation.

§ 1601.40 Outside interests of officers employees.

The Board may from time to ti
adopt rules and regulations govern
the conduct of officers or employ
with respect to matters in which t
have any interest adverse to the in
ests of the Corporation. Such r
and regulations may forbid an offi
or employee from participating in
porate action with respect to any

tract, grant, transaction or other matter in which, to the knowledge of such officer or employee, he or any member of his immediate family has any interest, financial or otherwise, unless (a) such officer or employee makes full disclosure of the circumstances to the Board or its delegate and the Board or its delegate determines that the interest is not so substantial as to affect the integrity of the services of such officer or employee, or (b) on the basis of standards to be established in such rules and regulations, the interest is too remote or too inconsequential to affect the integrity of such services. Such rules and regulations may also establish appropriate limits and reasonable prohibitions upon (a) the ownership by an officer or employee, or member of his immediate family, of securities of any firm, corporation or other entity doing a substantial volume of business with the Corporation; (b) the present or future association by an officer or employee (or former officer or former employee), or member of his immediate family, with any firm, corporation or other entity doing a substantial volume of business with the Corporation; and (c) the conduct or transaction of any corporate-related business or affairs by the Corporation through its officers, employees or agents with any former officers or employees of the Corporation or with any entities with which or persons with whom any former officer or employee is associated.

Subpart G—Deposits and Accounts

§ 1601.41 Deposits and accounts.

All funds of the Corporation, not otherwise employed, shall be deposited from time to time in general or special accounts in such banks, trust companies or other depositories as the Board may select, or as may be selected by an officer, agent or employee of the Corporation to whom such power has been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts and other orders for the payment of money that are payable to the order of the Corporation may be endorsed, assigned and delivered by any officer of the Corporation designated by the Board.

Subpart H—Seal

§ 1601.42 Seal.

The Corporation shall have a corporate seal, which shall include the words "Established by Act of Congress July 25, 1974" and shall be in the form adopted by the Board.

Subpart I—Fiscal Year

§ 1601.43 Fiscal year.

The fiscal year of the Corporation shall begin on October 1.

Subpart J—Indemnification

§ 1601.44 Indemnification.

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action, suit or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good failth and in a manner which he reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation, except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a Director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in paragraphs (a) and (b) of this section or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under paragraphs (a) and (b) of this section (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (a) and (b) of this section, respectively. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of Directors eligible to vote who were not parties to such action, suit or proceeding, or (2) if such qorum is not obtainable or, even if obtainable, a quorum of disinterested Directors so direc by independent legal counsel in a wr ten opinion.

(e) Expenses incurred in defending civil or criminal action, suit or pr ceeding may be paid by the Corpor tion in advance of the final dispositi of such action, suit or proceeding authorized by the Board in any ca upon receipt of an undertaking by on behalf of the Director, officer, en ployee or agent to repay such amoun unless it shall ultimately be dete mined that he is entitled to be inden nified by the Corporation as autho ized in this section.

(f) The indemnification provided b this section shall not be deemed exclu sive of any other rights to which person seeking indemnification may b entitled under any By-Law, agreemen or vote of disinterested Directors o otherwise, both as to action in his off cial capacity and as to action in an other capacity while holding suc office, and shall continue as to person who has ceased to be a Direc tor, officer, employee or agent an shall inure to the benefit of the heirs executors and administrators of such person.

Subpart K—Amendments

§ 1601.45 Amendments.

These By-Laws may be amended b a vote of a majority of the Directors i office, provided, that (a) such amendment is not inconsistent with the Act (b) the notice of the meeting at whic such action is taken shall have state the substance of the proposed amendment; (c) the notice of such meetin shall have been mailed, telegraphed o delivered to each Director at least five (5) days before the date of the meeting; and (d) whenever feasible, the proposed amendment shall have been published in the FEDERAL REGISTER at least thirty (30) days before the meeting and interested parties shall have been afforded a reasonable opportunity to comment thereon.

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.
1602.1 Purpose.
1602.2 Definitions.
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1602.10 Officials authorized to grant or deny requests for records.
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1602.12 Appeals of denials.
1602.13 Fees.

AUTHORITY: Sec. 1005(g), 42 U.S.C. 2996d(g).

SOURCE: 43 FR 51785, Nov. 7, 1978, unless otherwise noted.

§ 1602.1 Purpose.

This part prescribes the procedures by which records of the Legal Services Corporation may be made available pursuant to section 1005(g) of the Legal Services Corporation Act, 42 U.S.C. 2996d(g), and the Freedom of Information Act, 5 U.S.C. 552.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988]

§ 1602.2 Definitions.

As used in this part—

"Clerical" means secretaries and clerks.

"Commercial use request" means request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a specific category. If still in doubt, the Corporation will make the determination based on the factual circumstances surrounding the request, including the identity of the requester.

"Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

"Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

"Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a programs or program of scholarly research.

"FOIA" means the Freedom of Information Act, 5 U.S.C. 552.

"Management" means unit managers, office directors, and corporation officers.

"Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

"Professional Staff" means assistants to directors, staff attorneys, monitoring analysts, auditors, and computer programmers/analysts.

"Professional Support" means administrative assistants and junior accountants.

"Records" means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include *inter alia*, books, magazines, or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

"Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

"Review" means the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

"Search" means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The search should be conducted in the most efficient and least expensive manner. Searches may be done manually or by computer using existing programming.

[53 FR 6153, Mar. 1, 1988]

§ 1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this regulation. Records that may be exempt from disclosure may be made available as a matter of discretion when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the public, the Corporation, or any individual. The Corporation will attempt to provide assistance to requesting parties, including information about how a request may be submitted. The Corporation will act on requests for records in a timely manner.

§ 1602.4 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.5(b)(1) through (3) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters in Washington, DC. The Corporation will provide a copy of the index on request, at a cost not to exceed the direct cost of duplication.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988; 53 FR 9726, Mar. 24, 1988]

§ 1602.5 Central records room.

(a) The Corporation will maintain a central records room at its headquarters at 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1820. This room will be supervised by a Records Officer, and will be open during regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part. Certain records, described in paragraph (b) of this section, will be regularly maintained in or in close proximity to the records room, to facilitate access thereto by any member of the public.

(b) Subject to the limitation stated in paragraph (c) of this section, there will be available in the central records room the following:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.4.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, that deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public. These records will not be maintained in the central records room.

(d) Certain records maintained in the records room or otherwise made available pursuant to this part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it full explanation of the deletion.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988]

§ 1602.6 [Reserved]

§ 1602.7 Use of records rooms.

(a) Any member of the public who wishes to inspect or copy records regularly maintained in the central records room may secure access to these records by presenting himself or herself at the records room during business hours. No advance notice or appointment is required.

(b) Each records room will also be available to any member of the public to inspect and copy records which are not regularly maintained in such room. To obtain such records a person should present his or her request identifying the records to the Records Officer. Because it will sometimes be impossible to produce these records or copies of them on short notice, a person who wishes to use records room facilities to inspect or copy such records is advised to arrange a time in advance, by telephone or letter request made to the Records Officer of the facility which he or she desires to use. Persons submitting requests by telephone will be advised by the Records Officer or another designated employee whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate whether they wish to use the records room facilities on a specific date. The Records Officer will endeavor to advise the requesting party as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988]

§ 1602.8 Availability of records on request.

(a) In addition to the records made available through the records rooms, the Corporation will make such records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of these regulations.

(b) *Requests.* (1) A request will be acceptable if it identifies a record with sufficient particularity to enable officials of the Corporation to located the record with a reasonable amount of effort. Requests seeking records within a reasonably specific category will be deemed to conform to the statutory requirement of a request which "reasonably describes" such records if professional employees of the Corporation who are familiar with the subject area of the request would be able, with a reasonable amount of effort, to determine which particular records are encompassed within the scope of the request, and to search for, locate, and collect the records without unduly burdening or materially interfering with operations because of the staff time consumed or the resulting disruption of files. If it is determined that a request does not reasonably describe the records sought as specified in this paragraph, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of this paragraph and shall extend to the requesting party an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requesting party and the requirements of this paragraph.

(2) To facilitate the location of records by the Corporation, a requesting party should try to provide the following kinds of information, if known: (i) The specific event or action to which the record refers; (ii) the unit or program of the Corporation which may be responsible for or may have produced the record; (iii) the date of the record or the date or period to which it refers or relates; (iv) the type of record such as an application, a grant, a contract, or a report; (v) personnel of the Corporation who may have prepared or have knowledge of the record; (vi) citations to newspapers or publications which have referred to the record.

(3) The Corporation is not required to create a record to satisfy a request for information. When the information requested exists in the form of several records at several locations, the requesting party should be referred to those sources if gathering the information would unduly burden or materially interfere with operations of the Corporation.

(4) All requests for records under this section shall be made in writing, with the envelope and the letter clearly marked: "Freedom of Information Request." All such requests shall be addressed to the Records Officer at the headquarters of the Corporation or at any regional records office. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and forwarded immediately to the Records Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until forwarding to the appropriate office has been effected. On receipt of an improperly addressed request, the Records Officer shall notify the requesting party of the date on which the time period commenced to run.

(5) A person desiring to secure copies of records by mail should write to the Records Officer at the headquarters in Washington, D.C. The request must identify the records of which copies are sought in accordance with the requirements of this paragraph, and should indicate the number of copies desired. Fees may be required to be paid in advance in accordance with § 1602.13. The requesting party will be advised of the estimated fee, if any, as promptly as possible. If a waiver of fees is requested, the grounds for such request should be included in the letter.

(c) The Records Officer, upon request for any records made in accordance with this part, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requesting party within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances in which case the time limi may be extended for not more than 10 working days by written notice to the requesting party setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. In determining whether to issue a notice of extension of time for a response to a request beyond the 10-day period, Corporation officials shall consult with the Office of the General Counsel. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requesting party may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the Records Officer shall nevertheless continue to process the request. On expiration of the time limit, he shall inform the requesting party of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the President in accordance with § 1602.12; and he may ask the requesting party to forego appeal until a determination is made.

(e) After it has been determined that a request will be granted, the Corporation will act with diligence in providing a substantive response.

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute;

(3) Trade secrets and commercial or financial information obtained from a person and priviledged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Records or information compiled for enforcing the Act or any other law, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonbly be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(b) In the event that one or more of the above exemptions applies, any reasonably segregable portion of a record shall be provided to the requesting

party after deletion of the portions that are exempt. In appropriate circumstances, subject to the discretion of Corporation officials, it may be possible to provide a requesting party with: (1) A summary of information in the exempt portion of record; or

(2) An oral description of the exempt portion of a record. In determining whether any of the foregoing techniques should be employed in accordance with this paragraph or whether an exemption should be waived in accordance with paragraph (c) of this section, Corporation officials shall consult with the Office of General Counsel. No requesting party shall have a right to insist that any or all of the foregoing techniques should be employed in order to satisfy a request.

(c) Records that may be exempted from disclosure pursuant to paragraph (a) of this section may be made available as a matter of discretion when disclosure is not prohibited by law, if it does not appear adverse to legitimate interests of the Corporation, the public, or any person.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988]

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation. Other officials of the Corporation shall consult with the General Counsel before denying requests under this part, or before granting requests for waiver or modified application of an exemption or for categories of documents which the General Counsel determines may present special or unusual problems. The General Counsel and, subject to consultation with him where required, the Records Officer is authorized to grant or deny requests under this part.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6154, Mar. 1, 1988]

§ 1602.11 Denials.

(a) A denial of a written reques
a record that complies with th
quirements of § 1602.8 shall be in
ing and shall include the followin

(1) A reference to the applicabl
emption or exemptions in § 1602
upon which the denial is based;

(2) An explanation of how th
emption applies to the reque
records;

(3) A statement explaining why
deemed unreasonable to provide s
gable portions of the record afte
leting the exempt portions;

(4) The name and title of the pe
or persons responsible for denyin
request; and

(5) An explanation of the righ
appeal the denial and of the pr
dures for submitting an appeal, inc
ing the address of the official to w
appeals should be submitted.

(b) Whenever the Corpora
makes a record available subject to
deletion of a portion of the rec
such action shall be deemed a de
of a record for purposes of paragr
(a) of this section.

(c) All denials shall be treate
opinions and shall be maintained
indexed accordingly, subject onl
the necessity of deleting identif
details the release of which would
stitute a clearly unwarranted inva
of personal privacy.

§ 1602.12 Appeals of denials.

(a) Any person whose written
quest has been denied is entitle
appeal the denial within ninety
by writing to the President of the
poration at the headquarters in W
ington, D.C. The envelope and le
should be clearly marked: "Freedo
Information Appeal." An appeal
not be in any particular form,
should adequately identify the de
if possible, by describing the reque
record, identifying the official
issued the denial, and providing
date on which the denial was issue

(b) No personal appearance, ora
gument, or hearing will ordinaril
permitted on appeal of a denial. U
request and a showing of special
cumstances, however, this limita
may be waived and an informal co

ence may be arranged with the President, or the President's specifically designated representative, for this purpose.

(c) The decision of the President on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requesting party, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requesting party within twenty working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed ten days. The President's decision shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) Fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(c) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(d) For any request not described in paragraph (b) or (c) of this section, fees shall be limited to reasonable standard charges for document search and duplication.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Search for records and production of information is based on the following schedule of direct labor charges:

(i) Clerical = $2.77/quarter hour

(ii) Professional Support = $3.45/quarter hour

(iii) Professional Staff = $4.99/quarter hour

(iv) Management = $8.37/quarter hour.

(2) Computer time: Actual charges as incurred.

(3) Reproduction, duplication, or copying of records: $0.10 per page.

(4) Reproduction, duplication, or copying of microfilm: Actual charges as incurred.

(5) Certification of true copies: $1.00 each.

(6) Packing and mailing records: actual charges as incurred.

(7) Special delivery or express mail: actual charges as incurred.

(f) Documents shall be furnished without any charge or at a charge reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government," the Corporation will consider the following four criteria.

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government;"

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information "is not primarily in the commercial interest of the requester," the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section—

(1) If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(2) For any request described in paragraph (b), (c), or (d) of this section for the first two hours of search time or for the first one hundred pages of duplication.

(h) No requester will be required to make an advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or the Corporation has determined that the fee will exceed $250.

(1) In the event that a requester has previously failed to pay a required fee (within 30 days of the date of billing), an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. The request will not be deemed to have been received by the Corporation until such payment is made.

(2) In the event that the Corporation determines that an estimated fee will exceed $250, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requesting party t
opportunity to confer with approp
ate representatives of the Corporati
for the purpose of reformulating t
request so as to meet his needs at a
duced cost. The request will not
deemed to have been received by t
Corporation until an advance payme
of the entire fee is made.

(i) Interest will be charged to th
requesters who fail to pay the f
charged. Interest will be assessed
the amount billed, starting on the 3
day following the day on which
billing was sent. The rate charged
be as prescribed in 31 U.S.C. 3717.

(j) If the Corporation reasonably
lieves that a requester or group of
questers is attempting to break a
quest into a series of requests for
purpose of evading the assessment
fees, the Corporation shall aggreg
such requests and charge accordin

(k) The Corporation reserves
right to limit the number of co
that will be provided of any docum
to any one requesting party or to
quire that special arrangements
duplication be made in the case
bound volumes or other records re
senting unusual problems of hand
or reproduction.

[43 FR 51785, Nov. 7, 1978, as amended
FR 6154, Mar. 1, 1988; 53 FR 9726, Ma
1988]

PART 1603—STATE ADVISORY COUNCILS

Sec.

1603.1 Purpose.
1603.2 Definitions.
1603.3 Composition and term of offi
council membership.
1603.4 Procedure for appointment of
cil.
1603.5 Council purpose and duties.
1603.6 Duties of Corporation upon r
ci notification of violation.
1603.7 Organization and procedural
tioning of council.
1603.8 Corporation support of council
1603.9 Annual report of council.
1603.10 Multi-state recipients.

AUTHORITY: Sec. 1004(f), 88 Stat. 3
(42 U.S.C. 2996e(f)).

SOURCE: 40 FR 59351, Dec. 23, 1975,
otherwise noted.

§ 1603.1 Purpose.

The purpose of this part is to implement section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f), which provides authority for the appointment of state advisory councils.

§ 1603.2 Definitions.

As used in this part, the term—

(a) "Act" means the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*;

(b) "Apparent violation" means a complaint or other written communication alleging facts which, if established, constitute a violation of the Act, or any applicable rules, regulations or guidelines promulgated pursuant to the Act;

(c) "Board" means the Board of Directors of the Legal Services Corporation;

(d) "Corporation" means the Legal Services Corporation established under the Act;

(e) "Council" means a state advisory council established pursuant to Section 1004(f) of the Act;

(f) "Eligible client" means any person financially unable to afford legal assistance;

(g) "Governor" means the chief executive officer of a State;

(h) "Recipient" means any grantee, contractee, or recipient of financial assistance described in clause (A) of Section 1006(a)(1) of the Act;

(i) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

§ 1603.3 Composition and term of office of council membership.

A council shall be composed of nine members. A majority of the members of a council shall be attorneys admitted to practice in the State. It is recommended that the remainder of the council, to the maximum extent possible, be broadly representative of persons concerned with the effective functioning of legal services programs. Membership of a council shall be subject to annual reappointment, but it is recommended that no member of a council be appointed to serve for more than three consecutive years.

§ 1603.4 Procedure for appointment of council.

At the formal request of the Board, to be made before January 14, 1976, the Governor may appoint a council for the State. Those council members who are attorneys admitted to practice in the State shall be appointed by the Governor after recommendations have been received from the State bar association. In making such appointments, it is recommended the the Governor consult with other bar associations in the State, representatives of groups concerned with the interests of recipients, eligible clients and other interested groups. It is recommended that the Governor appoint attorneys who have interest in and knowledge of the delivery of quality legal services to the poor, and that the remaining members of the council, who are not attorneys, be selected after the Governor has consulted with representatives of groups concerned with the interests of eligible clients. It is recommended that the Governor seek recommendations from recipients in the State before appointing any members to the council. Sixty days prior to the expiration of a member's term, the Governor shall notify those groups mentioned in this Section so that their recommendations may be solicited for purposes of appointment of a new member or reappointment of an incumbent member of the council.

§ 1603.5 Council purpose and duties.

(a) The purpose of the council shall be to notify the Corporation of any apparent violation as defined in § 1603.2(b) of this chapter.

(b) In fulfilling the purpose set forth in paragraph (a) of this section, the council shall forward any apparent violation to the Corporation. The Chairperson of the council shall inform the complainant, the Corporation and the recipient of any action taken on the complaint. Notification of an apparent violation forwarded by the council to the Corporation shall not necessarily constitute a position of the council concerning the apparent violation.

(c) These procedures are not exclusive. Complaints may be submitted to the Corporation, and complaints submitted to a council may be submitted to the Corporation without regard to council action. The Corporation shall inform the complainant, the council and the recipient of all action taken on the complaint.

§ 1603.6 Duties of Corporation upon receipt of notification of violation.

(a) Upon receipt of a notification of an apparent violation, the matters contained therein shall be investigated and resolved by the Corporation in accordance with the Act and rules and regulations issued thereunder.

(b) Upon receipt from a council of a notification of an apparent violation, the Corporation shall allow any recipient affected thereby a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notication.

(c) The Corporation shall inform the Chairperson of a council of the action, if any, the Corporation has taken with regard to any notification received from such council.

§ 1603.7 Organization and procedural functioning of council.

(a) Within 30 days after the appointment of the council, and annually thereafter, the Governor shall send to the Secretary of the Corporation in Washington, D.C., a list of the members of the council for the State that shall include the name, address and telephone number of each council member, and indicate which members are attorneys.

(b) It is recommended that the Governor appoint from among those named to the council a Chairperson of the council.

(c) It is recommended that each council establish at its first meeting such fair and reasonable procedures for its operation as it may deem necessary to carry out the purpose set forth in § 1603.5(a) of this chapter. The procedures for operation of the council shall include provisions for notifying the appropriate regional director of
the Corporation of the time and p
of any meeting of the council.

(d) It is recommended that a cou
meet at the call of the Chairpe
thereof, or at the request to the Ch
person of at least four members th
of, at such times as may be neces
to carry out its duties, but at least
nually.

§ 1603.8 Corporation support of counc

(a) The Corporation shall inf
the Chairperson of each council of
funds available to the council from
Corporation for actual and reason
expenses incurred by members of
council to pursue council business.

(b) It shall be the duty of the Pr
dent of the Corporation to keep
Chairperson of each council infor
of the work of the Corporation.

(c) The Secretary of the Corpora
shall mail annually to each recip
the name and address of the Chair
son of the appropriate council an
form of notice indicating where c
plaints may be sent. The recip
shall post said name and address
the Chairperson and said notice
plain public view in each office of
recipient.

§ 1603.9 Annual report of council.

On or before March 31, 1977, and
or before March 31 of each succee
year, a council shall submit to the
poration a report of the activitie
the council during the previous ca
der year. The report may contain c
ments or suggestions regarding
best to provide high quality legal
sistance to the poor, and regard
such other matters having to do w
provision of legal services to elig
clients in the State as the council
deem advisable.

§ 1603.10 Multi-state recipients.

Where a recipient has offices
more than one State, the counci
the State in which the apparent vi
tion occurred has the responsib
for notifying the Corporation and
recipient at its local and adminis
tive offices.

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.
1604.1 Purpose.
1604.2 Definitions.
1604.3 General policy.
1604.4 Compensated outside practice.
1604.5 Uncompensated outside practice.

AUTHORITY: Secs. 1007(a)(4), 1008(e) (42 U.S.C. 2996f(a)(4), 2996g(e)).

SOURCE: 41 FR 18512, May 5, 1976, unless otherwise noted.

§ 1604.1 Purpose.

This part is designed to permit an attorney to comply with the reasonable demands made upon all members of the Bar and officers of the Court, so long as those demands do not hinder fulfillment of the attorney's overriding responsibility to serve those eligible for assistance under the Act.

§ 1604.2 Definitions.

(a) "Attorney", as used in this part, means a person who is employed full time in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is rendered.

(b) "Outside practice of law" means the provision of legal assistance to a client who is not entitled to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluation.

§ 1604.3 General policy.

No attorney shall engage in any outside practice of law if the director of the recipient has determined that such practice is inconsistent with the attorney's full time responsibilities.

§ 1604.4 Compensated outside practice.

A recipient may permit an attorney to engage in the outside practice of law for compensation if § 1604.3 is satisfied, and

(a) The attorney is newly employed and has a professional responsibility to close cases from a previous law practice, and does so as expeditiously as possible; or

(b) The attorney is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction, and remits to the recipient all compensation received.

§ 1604.5 Uncompensated outside practice.

A recipient may permit an attorney to engage in uncompensated outside practice of law if § 1604.3 is satisfied, and the attorney is acting:

(a) Pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction; or on behalf of;

(b) A close friend or family member; or

(c) A religious, community, or charitable group.

PART 1605—APPEALS ON BEHALF OF CLIENTS

Sec.
1605.1 Purpose.
1605.2 Definition.
1605.3 Review of Appeals.

AUTHORITY: Secs. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

SOURCE: 41 FR 18513, May 5, 1976, unless otherwise noted.

§ 1605.1 Purpose.

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2 Definition.

"Appeal" means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

(a) Discourage frivolous appeals, and

(b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but

(c) Shall not interfere with the professional responsibilities of an attorney to a client.

PART 1606—PROCEDURES GOVERNING TERMINATION OF FINANCIAL ASSISTANCE

Sec.

1606.1 Purpose.
1606.2 Definitions.
1606.3 Grounds for termination.
1606.4 Preliminary determination.
1606.5 Informal conference.
1606.6 Initiation of proceedings.
1606.7 Presiding officer.
1606.8 Pre-hearing conference.
1606.9 Conduct of hearing.
1606.10 Burden of proof.
1606.11 Briefs and argument.
1606.12 Recommended decision.
1606.13 Final decision.
1606.14 Time extension and waiver.
1606.15 Right to counsel.
1606.16 Reimbursement.
1606.17 Interim funding.
1606.18 Termination funding.
1606.19 Notice.

AUTHORITY: Secs. 1006(b) (1) and (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b) (1) and (3), 2996f(a) (1), (3), and (9), 2996f(d), 2996g(e), 2996j).

SOURCE: 43 FR 32770, July 28, 1978, unless otherwise noted.

§ 1606.1 Purpose.

By affording a recipient the opportunity for a timely, full, and fair hearing that will promote informed deliberation by the Corporation when there is reason to believe a grant or contract should be terminated, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

[43 FR 32770, July 28, 1978, as amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.2 Definitions.

(a) "Termination" means a decision that financial assistance to a recipient will be permanently terminated in whole or in part prior to expiration of the recipient's current grant or contract.

(b) "Director of a recipient" means the person who has overall day-to-day
responsibility for management of
erations by the recipient.

(c) "Presiding Officer" means t
person appointed by the President
recommend a decision that a grant
contract should be continued or ter
nated.

[43 FR 32770, July 28, 1978, as amended
48 FR 54199, Nov. 30, 1983]

§ 1606.3 Grounds for termination.

A grant or contract may be ter
nated when:

(a) Termination is required by,
will implement a provision of law,
Corporation rule, regulation, gui
line, or instruction that is genera
applicable to all recipients of the sa
class or a funding policy, standard,
criterion approved by the Boa
except that termination shall not
based on a Corporation rule, regu
tion, guideline, or instruction that w
not in effect when the current gra
was made or when the current c
tract was entered into; or

(b) There has been substantial f
ure by a recipient to comply with
provision of law, or a rule, regulati
or guideline issued by the Corporati
or a term or condition of a current
prior grant from contract with t
Corporation. In the absence of unu
al circumstances, a grant or contr
shall not be terminated for this ca
unless the Corporation has given t
recipient notice of such failure and
opportunity to take effective corr
tive action; or

(c) There has been substantial f
ure by a recipient to use its resour
to provide economical and effect
legal assistance of high quality
measured by generally acepted prof
sional standards, the provisions of t
Act, or a rule, regulation or guideli
issued by the Corporation. In the
sence of unusual circumstances,
grant or contract shall not be ter
nated for this cause unless the Cor
ration has given the recipient notice
such failure and an opportunity
take effective corrective action.

[48 FR 54199, Nov. 30, 1983]

§ 1606.4 Preliminary determination.

(a) When there is reason to beli
that a grant or contract should be t

minated, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for the proposed action, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for that action.

(b) The preliminary determination shall advise the recipient that it may, within 30 days of receipt of the preliminary determination, make written request for:

(1) A hearing under this part, or

(2) An informal conference under § 1606.5 of this part, with a subsequent right as there provided to request a hearing.

(c) The preliminary determination shall also advise the recipient of its right to receive interim, and to request termination, funding, under § 1606.17 or § 1606.18 of this part.

(d) If the recipient advises the Corporation that it will not request review, or if it fails to request review within the time prescribed in § 1606.4(b) or § 1606.5, the preliminary determination shall become final.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983; 50 FR 30713, July 29, 2985]

§ 1606.5 Informal conference.

On timely request by the recipient, the Corporation employee who made the preliminary determination shall promptly conduct an informal conference with the recipient at a time and place designated by the employee. The parties thereto shall exchange views, seek to narrow the issues, and explore the possibilities of settlement or compromise. At the conclusion of the conference, which may be adjourned for deliberation or consultation, the Corporation employee may, in writing, modify, withdraw, or affirm the preliminary determination. The recipient may, within 5 days thereafter, make written request for a hearing under §§ 1606.8 through 1606.14 of this part.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.6 Initiation of proceedings.

Within 10 days after receipt of a request for a hearing made under § 1606.4(b) or § 1606.5, the Corporation shall notify a recipient in writing of:

(a) The name of the presiding officer, and of the attorney who will represent the Corporation;

(b) The date, time and place scheduled for a prehearing conference, if any should be requested or ordered; and

(c) The date, time and place scheduled for the hearing.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.7 Presiding officer.

(a) The presiding officer shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of the notice required under § 1606.6, the recipient shall notify the Corporation if it objects to the presiding officer on the grounds that the person does not satisfy the criteria stated in § 1606.7(a), or is personally biased. The notice shall state the specific facts and documents that the recipient contends support its objection, and, if a pre-hearing conference has not been scheduled, shall request a pre-hearing conference for the purpose of presenting the objection. At the pre-hearing conference, the recipient and the Corporation may question the presiding officer for a reasonable period of time on matters relevant to the recipient's objection.

(c) The recipient shall, within 5 days following the pre-hearing conference, notify the Corporation of any further facts that it contends support its objections. The President shall, within 10 days following the pre-hearing conference, either sustain the objection and appoint a new hearing officer or overrule the objection.

(d) No objection to the appointment of a presiding officer may be made unless presented in the manner specified by this section.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.8 Pre-hearing conference.

(a) A pre-hearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

(1) Proposals to define and narrow the issues;

(2) Efforts to stipulate the facts, in whole or in part:

(3) The probable number, identity, and order of presentation of exhibits and witnesses;

(4) On the agreement of the parties, the possibility of presenting the case on written submission or oral argument;

(5) The desirability of advance submission of some or all of the direct testimony in writing;

(6) Any necessary variation in the date, time and place of the hearing;

(7) Discussion of settlement; and

(8) Such other matters as may be appropriate.

(b) In advance of the pre-hearing conference, the presiding officer may require a party to submit a written statement discussing any matter described in paragraph (a) of this section. After the pre-hearing conference, the presiding officer may establish the procedures, consistent with this part, to be followed at the hearing.

(c) The presiding officer may, at the pre-hearing conference or at any subsequent appropriate time prior to completion of the hearing, require the Corporation or the recipient, on sufficient notice, to produce a relevant document in its possession, to make a report not unduly burdensome to prepare, or to produce a person in its employ to testify, if any might offer a relevant and substantial addition to the accuracy or completeness of the record. With the consent of the presiding officer, a party may make a written submission before the hearing.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

§ 1606.9 Conduct of hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 days after the notice required by § 1606.6, and, whenever practical, shall
be held at a place convenient to the r
cipient and the community it serves.
hearing affecting more than one con
munity or recipient shall be held in
single centrally located place unle
the presiding officer determines tha
an additional hearing place is r
quired.

(b) The presiding officer shall pr
side, conduct a full and fair hearin
avoid delay, maintain order, an
insure that a record sufficient for fu
disclosure of the facts and issues
made. The hearing shall be open t
the public unless, for good cause an
in the interests of justice, the presi
ing officer shall determine otherwise.

(c) The presiding officer may allo
any interested person or organizatio
to participate in the hearing if suc
participation will not broaden th
issues unduly or cause delay, and wi
aid in proper determination of th
issues.

(1) A person or organization wishin
to participate in a hearing shall r
quest permission from the presidin
officer, stating the reason for the r
quest, and the nature of the evidenc
or argument to be offered; and sha
notify the Corporation and the recip
ent of its request.

(2) The presiding officer shall notif
the Corporation, the recipient, an
the person or organization requestin
participation whether the request ha
been granted, and in case of deni
shall include a brief statement of th
reasons therefor.

(3) The presiding officer may lim
the scope or form of participation a
thorized under this paragraph.

(d) The Corporation and the recip
ent each may present its case by or
or documentary evidence, conduct e
amination and cross-examination
witnesses, examine any document su
mitted by another party, and subm
rebuttal evidence.

(e) If a party fails, without goo
cause, to produce a person or doc
ment required under § 1606.8(c), th
presiding officer may make an adver
finding on the fact or issue with r
spect to which production was r
quired.

(f) Technical rules of evidence sha
not apply. The presiding officer sha
make any procedural or evidentia

ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(h) A stenographic or electronic sound record, or a summary of the hearing shall be made in a manner determined by the presiding officer, and a copy shall be made available to a party upon payment of its cost.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983; 50 FR 30713, July 29,1985]

§ 1606.10 Burden of proof.

At a hearing under § 1606.9:

(a) The Corporation shall have the obligation of proving, by a preponderance of the evidence, the existence of any disputed fact relied upon as justification for termination; and

(b) On all other issues, the Corporation shall have the obligation of establishing a substantial basis for terminating the grant or contract.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.11 Briefs and argument.

(a) Within 10 days after the close of the hearing, each party may, and, upon request of the presiding officer, shall, submit to the presiding officer, with service upon all other parties, proposed findings of fact and argument on matters of law or policy.

(b) The presiding officer may direct or permit oral argument at the close of the hearing or after submission of briefs.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

§ 1606.12 Recommended decision.

(a) As soon as practicable after the hearing, and normally within 20 days after its conclusion, the presiding officer shall issue a written recommended decision.

(1) Continuing the recipient's current grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(2) Terminating financial assistance to the recipient as of a particular date.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the evidence adduced at the hearing or on matters of which official notice was taken.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.13 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 days after receipt by a recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 10 days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) As soon as practicable after receipt of a request for review of a recommended decision, but not later than 30 days after the completion of the hearing, the President shall adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.12(b).

(d) A decision by the President shall become final upon receipt by a recipient.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983; 50 FR 30713, July 29, 1985]

§ 1606.14 Time and extension and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the person making the preliminary determination, prior to the time the presiding officer is designated;

(2) By the presiding officer, prior to the issuance of a recommended decision; or

(3) By the President at any time.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 90 days of the preliminary determination.

(c) Any other provision of these rules may be waived or modified:

(1) By the presiding officer with the assent of the recipient and of counsel for the Corporation; or

(2) By the President upon good cause shown and determined.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

§ 1606.15 Right to counsel.

At a hearing under § 1606.9, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The attorney designated may be an employee, or may be outside counsel retained for the purpose. Unless prior written approval is received from the Corporation, the fee paid to outside counsel shall not exceed the hourly equivalent of the rate of level V of the executive schedule specified in section 5316 of title 5, United States Code.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.16 Reimbursement.

If the recipient's grant or contract is continued or refunding is granted after a preliminary determination has been issued under § 1606.4, a recipient shall receive reimbursement by the Corporation, to the extent it has prevailed, for reasonable and actual expenses that were required in connection with proceedings under this part.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.17 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to continuation of its grant or contract. Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the act.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.18 Termination funding.

After a final determination to terminate a recipient's grant or contract, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.19 Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient, and may be sent to the chairperson of its governing body.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

PART 1607—GOVERNING BODIES

Sec.

1607.1 Purpose.
1607.2 Definitions.
1607.3 Composition.
1607.4 Functions of a governing body.
1607.5 Waiver.
1607.6 Compensation.
1607.7 Compliance.

AUTHORITY: Sec. 1007(c); 42 U.S.C. 2996f(c); Pub. L. 97-377; 96 Stat. 1830; Pub. L. 100-202; 101 Stat. 1329.

SOURCE: 43 FR 32772, July 28, 1978, unless otherwise noted.

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel, and to insure that the recipient is accountable to its clients.

§ 1607.2 Definitions.

(a) "Eligible client," as used in this part means a person eligible to receive legal assistance under the Act, without regard to whether the person is receiving assistance at the time of selection for membership on a governing body.

(b) "Governing body" refers to the board of directors or other governing board of recipient receiving funds under section 1006(a)(1)(A) of the Act.

(c) "Board member" refers to a member of a recipient's governing body.

[48 FR 1971, Jan. 17, 1983]

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance, and shall have a governing body that reasonably reflects the interests and characteristics of the eligible clients in the area served.

(b) At least sixty (60) percent of a governing body shall be attorneys admitted to practice in a State in which a recipient is to provide legal assistance, who are supportive of the purposes of the act and have interest in, and knowledge of, the delivery of quality legal services to the poor.

(c) Appointment of the attorney members of the governing body shall be conducted so that a majority of the governing body are appointed by the governing bodies of State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient is to provide legal assistance. Appointments shall be made so as to insure that the attorney board members include women and minorities and reasonably reflect the population of the areas served. Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by the bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area. Any additional attorney members of the board may be appointed by or selected from other bar associations or legal organizations with an interest in the delivery of legal services to the poor.

(d) At least one-third of a governing body shall be, when selected, eligible clients.

(e) The members who are eligible clients shall be selected from, or designated by, a variety of appropriate groups including, but not limited to, client and neighborhood associations and organizations.

(f) The remaining members of a governing body, whatever the method of selection, shall be individuals interested in and supportive of legal services to the poor.

(g) The nonattorney board membership shall not be dominated by persons serving as the representatives of a single association, group or organization.

(h) Members of a governing body may be selected by appointment, election, or other means. The method of selection and composition shall be subject to approval by the Corporation.

[43 FR 32772, July 28, 1978, as amended at 48 FR 1971, Jan. 17, 1983]

§ 1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. Timely and effective prior public notice of all meetings shall be given, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(b) A governing body shall establish and enforce broad policies governing the operation of a recipient, but shall not interfere with any attorney's professional responsibilities to clients.

§ 1607.5 Waiver.

(a) Upon application, the President shall waive the requirements of this part to permit a recipient that was funded under section 222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such nonattorney majority.

(b) The President may waive the requirements of this part upon application of a recipient that demonstrates that it cannot comply with them because of:

(1) The nature of the population or area served; or

(2) Special circumstances, including, but not limited to, conflicting require-

ments of the recipient's major funding source.

(c) A recipient seeking a waiver shall demonstrate that it has made diligent efforts to comply with the requirements of this part.

§ 1607.6 Compensation.

While serving on the governing body of a recipient, no board member shall receive compensation from any recipient of the Corporation, whether such compensation is termed salary, per diem, or otherwise. A board member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of board membership.

[53 FR 30679, Aug. 15, 1988]

§ 1607.7 Compliance.

(a) A recipient whose current governing body does not satisfy the requirements of this part shall submit a plan for achieving compliance to the relevant Regional Office by March 1, 1983. The plan shall include:

(1) The current composition of the recipient's governing body, and the date upon which the composition was achieved;

(2) The date upon which the terms of each current member of the recipient's governing body will expire;

(3) The recipient's plan for complying with the requirements of Section 1607.3 and timetables for implementation. This plan shall:

(i) Identify the bar associations in the localities in which the recipient provides legal services, identifying the individual bar association or combinations of bar associations to which a majority of practicing attorneys belong;

(ii) Detail the method of selecting attorney members to provide for representation on the recipient's governing body in accordance with this regulation; and

(iii) Insure that the attorney board members include women and minorities and reasonably reflect the population of the areas served.

(b) Compliance with § 1607.3 shall occur no later than September 15, 1983.

(c) The President may, upon application, extend the time in which a recipient must comply with the requirements of § 1607.3(c). The application must state the reasons why complying by September 15, 1983 would be unduly burdensome or impossible to achieve for the recipients.

(d) An application for an extension of time under paragraph (c) of this section must be received by the Corporation no later than March 18, 1983. An extension may be granted for no more than three months, and no more than two extensions may be granted to any recipient. In no event may the time for compliance be extend beyond March 15, 1984.

[48 FR 1971, Jan. 17, 1983]

PART 1608—PROHIBITED POLITICAL ACTIVITIES

Sec.

1608.1 Purpose.
1608.2 Definition.
1608.3 Prohibitions applicable to the Corporation and to recipients.
1608.4 Prohibitions applicable to all employees.
1608.5 Prohibitions applicable to Corporation employees and staff attorneys.
1608.6 Prohibitions applicable to attorneys and to staff attorneys.
1608.7 Attorney-client relationship.
1608.8 Enforcement.

AUTHORITY: Secs. 1001(5), 1005(b)(2), 1006(b)(3), 1006(b)(5)(B), 1006(d)(3), 1006(d)(4), 1006(e)(1), 1006(e)(2), 1007(a)(6), 1007(b)(2); 42 U.S.C. 2996(5), 2996d(b)(2), 2996e(b)(3), 2996e(b)(5)(B), 2996e(d)(3), 2996e(d)(4), 2996e(e)(1), 2996e(e)(2), 2996f(a)(6), 2996(b)(2).

SOURCE: 43 FR 32773, July 28, 1978, unless otherwise noted.

§ 1608.1 Purpose.

This part is designed to insure that the Corporation's resources will be used to provide high quality legal assistance and not to support or promote political activities or interests. The part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

§ 1608.2 Definition.

"Legal assistance activities," as used in this part, means any activity.

(a) Carried out during an employee's working hours;

(b) Using resources provided by the Corporation or by a recipient; or

(c) That, in fact, provides legal advice, or representation to an eligible client.

§ 1608.3 Prohibitions applicable to the Corporation and to recipients.

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the act.

(b) Neither the Corporation nor any recipient shall contribute or make available Corporation funds, or any personnel or equipment

(1) To any political party or association;

(2) To the campaign of any candidate for public or party office; or

(3) For use in advocating or opposing any ballot measure, initiative, or referendum.

§ 1608.4 Prohibitions applicable to all employees.

(a) No employee shall intentionally identify the Corporation or a recipient with any partisian or nonpartisan political activity, or with the campaign of any candidate for public or party office.

(b) No employee shall use any Corporation funds for activities prohibited to attorneys under § 1608.6; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities.

§ 1608.5 Prohibitions applicable to Corporation employees and to staff attorneys.

While employed under the act, no Corporation employee and no staff attorney shall, at any time,

(a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan of nonpartisan;

(b) Directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(c) Be a candidate for partisan elective public office.

§ 1608.6 Prohibitions applicable to attorneys and to staff attorneys.

While engaged in legal assistance activities supported under the act, no attorney shall engage in

(a) Any political activity,

(b) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or

(c) Any voter registration activity.

§ 1608.7 Attorney-client relationship.

Nothing in this part is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

§ 1608.8 Enforcement.

This part shall be enforced according to the procedures set forth in § 1612.5.

PART 1609—FEE-GENERATING CASES

Sec.
1609.1 Purpose.
1609.2 Definition.
1609.3 Prohibition.
1609.4 Authorized representation in a fee-generating case.
1609.5 Acceptance of fees.
1609.6 Accounting for attorneys' fees.
1609.7 Acceptance of reimbursement.
1609.8 Applicability.

AUTHORITY: Sec. 1007(b)(1) Legal Services Act of 1974, as amended (42 U.S.C 2996f(b)(1)).

SOURCE: 49 FR 19656, May 9, 1984, unless otherwise noted.

§ 1609.1 Purpose.

This part is designed to insure that recipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

§ 1609.2 Definition.

"Fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

§ 1609.3 Prohibition.

No recipient shall use funds received from the Corporation to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All recipients shall establish procedures for the referral of fee-generating cases.

§ 1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when:

(a) The recipient has determined that free referral is not possible because:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

(2) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or

(3) Emergency circumstances compel immediate action before referral can be made, but the client is advised that if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(b) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(c) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(d) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401, *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, as amended, Supplemental Security Income f Aged, Blind, and Disabled.

§ 1609.5 Acceptance of fees.

A recipient may seek and accept fee awarded or approved by a court administrative body, or included in settlement, if:

(a) The requirements of § 1609.4 a met, and

(b) Funds received are not used f purposes prohibited by the Act, the regulations, or other law applicable the expenditure of funds appropriat in the year the fee is received, and a accounted for in the manner direct by the Corporation.

§ 1609.6 Accounting for attorneys' fees.

Fees awarded to a recipient rep sent compensation to the recipient f resources expended in litigating a pa ticular matter. The revenue from su fees shall be recorded in the sar fund to which the related expens have been charged. The revenue sh be recorded during the accounti period in which the money from t fee award is received by the recipier

§ 1609.7 Acceptance of reimbursement.

When a case or matter subject this part results in a recovery of da ages, other than statutory benefits, recipient may accept reimburseme from the client for out-of-pocket co and expenses incurred in connecti with the case or matter, if

(a) The requirements of § 1609.4 a met, and

(b) The client has agreed in writi to reimburse the recipient for su costs and expenses.

§ 1609.8 Applicability.

Nothing in this part shall prevent recipient from:

(a) Requiring a client to pay co fees when the client does not qual to proceed in forma pauperis und the rules of the jurisdiction; or

(b) Accepting a fee in a case that w initiated prior to adoption of this pa

(c) Acting as co-counsel with a p vate attorney when the case meets t standards set forth in § 1609.5, and cepting part of any fees that m result from a shared case.

PART 1610—USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION

Sec.
1610.1 Definition.
1610.2 Prohibition.
1610.3 Authorized use of other funds.
1610.4 Accounting.
1610.5 Waiver.

AUTHORITY: Sec. 1010(c); (42 U.S.C. 2996i).

SOURCE: 41 FR 25902, June 23, 1976, unless otherwise noted.

§ 1610.1 Definition.

As used in this part, the phrase "purposes prohibited by the Act or Corporation Regulations" refers to activities prohibited by the following Sections of the Act and the regulations promulgated thereunder:

(a) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(2) (Political activities);

(b) Section 1007(a)(5) (Legislative and administrative representation);

(c) Section 1007(a)(10) (Activities inconsistent with professional responsibilities);

(d) Section 1007(b)(1) (Fee-generating cases; criminal proceedings; civil actions challenging criminal convictions);

(e) Section 1007(b)(4) (Representation of juveniles);

(f) Section 1007(b)(5) (Advocacy training);

(g) Section 1007(b)(6) (Organizing activities);

(h) Section 1007(b)(7) (School desegregation);

(i) Section 1007(b)(8) (Abortions); and

(j) Section 1007(b)(9) (Violations of Military Selective Service Act or military desertion).

§ 1610.2 Prohibition.

Funds received from another source for the provision of legal assistance shall not be used by a recipient for purposes prohibited by the Act or Corporation regulations, unless such use is authorized by § 1610.3.

§ 1610.3 Authorized use of other funds.

A receipient may receive public or tribal funds and use them in accordance with the purposes for which they were provided.

§ 1610.4 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements, in the manner directed by the Corporation.

§ 1610.5 Waiver.

Any provision of this part may be waived by the President when necessary to permit the Corporation to make a contract or other arrangement for the provision of legal assistance with any private attorney, law firm, state or local entity of attorneys, or a legal aid organization that has a separate public defender program.

PART 1611—ELIGIBILITY

Sec.
1611.1 Purpose.
1611.2 Definitions.
1611.3 Maximum income level.
1611.4 Authorized exceptions.
1611.5 Determination of eligibility.
1611.6 Asset ceilings.
1611.7 Manner of determining eligibility.
1611.8 Retainer agreement.
1611.9 Change in circumstances.
APPENDIX A—LEGAL SERVICES CORPORATION POVERTY GUIDELINE

AUTHORITY: Secs. 1006(b)(1), 1007(a)(1), 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(1), 2996f(a)(1), 299f(a)(2)).

SOURCE: 48 FR 54205, Nov. 30, 1983, unless otherwise noted.

§ 1611.1 Purpose.

This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The part also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

"Governmental program for the poor" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

"Total cash receipts" include money wages and salaries before any deduction, but do not include food or rent in lieu of wages; income from self-employment after deductions for business or farm expenses; regular payments from public assistance; social security; unemployment and worker's compensation; strike benefits from union funds; veterans benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and non-cash benefits.

§ 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

(1) Cost-of-living in the locality;

(2) The number of clients who can be served by the resources of the recipient;

(3) The population who would b
gible at and below alternative in
levels; and

(4) The availability and cost of
services provided by the private b
the area.

(d) Unless authorized by Se
1611.4, no person whose incom
ceeds the maximum annual in
level established by a recipient
be eligible for legal assistance u
the Act.

(e) This part does not prohibit
cipient from providing legal assist
to a client whose annual incom
ceeds the maximum income leve
tablished here, if the assistance
vided the client is supported by f
from a source other than the Cor
tion.

§ 1611.4 Authorized exceptions.

(a) A person whose gross incom
ceeds the maximum income leve
tablished by a recipient but doc
exceed 150 percent of the nationa
gibility level (125% of poverty) ma
provided legal assistance under
Act if:

(1) The person's circumstance
quire that eligibility should be all
on the basis of one or more of the
tors set forth in § 1611.5(b)(1); or

(2) The person is seeking legal a
ance to secure benefits provided
governmental program for the po

(b) In the event that a recipien
termines to serve a person whose
income exceeds 125% of poverty.
decision shall be documented an
cluded in the client's file. The re
ent shall keep such other recor
will provide information to the C
ration as to the number of clien
served and the factual bases for
decisions made.

§ 1611.5 Determination of eligibility.

(a) The governing body of a re
ent shall adopt guidelines, consi
with these regulations, for deter
ing the eligibility of persons se
legal assistance under the Act. By
uary 30, 1984, and annually therea
guidelines shall be reviewed and
propriate adjustments made.

(b) In addition to gross income,
cipient shall consider the other

vant factors listed in paragraphs (b)(1) and (b)(2) of this section before determining whether a person is eligible to receive legal assistance.

(1) Factors which shall be used in the determination of the eligibility of clients over the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) Medical expenses, and in exceptional instances, with the prior, written approval of the project director based on written documentation received by the recipient and available for review by the Corporation, if a person's gross income is primarily committed to medical or nursing home expenses, a person may be served even if that person's gross income exceeds 150 percent of the national eligibility level;

(C) Fixed debts and obligations, including unpaid Federal, state and local taxes from prior years;

(D) Child care, transportation, and other expenses necessary for employment;

(E) Expenses associated with age or physical infirmity of resident family members; and

(F) Other significant factors related to financial inability to afford legal assistance.

(2) Factors which shall be used in the determination of the eligibility of clients under the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) The availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought;

(C) The consequences for the individual if legal assistance is denied;

(D) The existence of assets, including both liquid and nonliquid, which are available to the applicant and are in excess of the asset ceiling set by the recipient pursuant to § 1611.6;

(E) Other significant factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment.

(3)(A) If a recipient tentatively determines to serve a client over the maximum income level on the basis of factors listed in § 1611.5(b)(1), the factors listed in § 1611.5(b)(2) shall also be used before reaching a final determination.

(B) If a recipient tentatively determines not to serve a client under the maximum income level on the basis of factors listed in §1611.5(b)(2), the factors listed in § 1611.5(b)(1) must also be used before reaching a final determination.

(c) A recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

§ 1611.6 Asset ceilings.

(a) By January 30, 1984, and annually thereafter, the governing body of the recipient shall establish and transmit to the Corporation guidelines incorporating specific and reasonable asset ceilings, including both liquid and non-liquid assets, to be utilized in determining eligibility for services. The guidelines shall consider the economy of the service area and the relative cost-of-living of low-income persons so as to ensure the availability of services to those in the greatest economic and legal need.

(b) The guidelines shall be consistent with the recipient's priorities established in accordance with 45 CFR 1620 and special consideration shall be given to the legal needs of the elderly, institutionalized, and handicapped.

(c) Assets considered shall include all liquid and non-liquid assets of all persons who are resident members of a family unit, except that a recipient may exclude the principal residence of a client. The guidelines shall take into account impediments to an individual's access to assets of the family unit or household.

(d) Reasonable equity value in work-related equipment which is essential to the employment or self-employment of an applicant or member of a family unit, shall not be utilized to disqualify an applicant, provided that the owner is attempting to produce income consistent with its fair market value.

(e) The governing body may establish authority for the project director to waive the ceilings on minimum allowable assets in unusual or extremely meritorious situations. In the event that a waiver is granted, that decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual basis for the decisions made.

§ 1611.7 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without express written consent of the client, except that the recipient shall provide such information to the Corporation when:

(1) The Corporation is investigating allegations that question the financial eligibility of a previously identified client and the recipient's representation thereof;

(2) The information sought by the Corporation relates solely to the financial eligibility of that particular client;

(3) The information sought by the Corporation is necessary to confirm or deny specific allegations relating to
that particular client's financia
bility and the recipient's repre
tion thereof; and

(4) The specific information
by the Corporation is not protec
the attorney-client privilege.

The information provided to th
poration by the recipient shall
disclosed to any person who is n
ployed by the Corporation. Pr
providing the information to th
poration, the recipient shall noti
client that the recipient is requ
provide to the Corporation the
mation sought.

§ 1611.8 Retainer agreement.

(a) A recipient shall execute
ten retainer agreement, in a fo
proved by the Corporation, wit
client who receives legal service
the recipient. The retainer agre
shall be executed when represe
commences (or, if not possible
to an emergency situation, a
thereafter as is practicable), an
clearly identify the relationsh
tween the client and the recipie
matter in which representat
sought, the nature of the legal s
to be provided, and the rights
sponsibilities of the client. The
ent shall retain the executed r
agreement as part of the client
and shall make the agreement
able for review by the Corporati
manner which protects the iden
the client.

(b) A recipient is not required
cute a written retainer agre
when the only service to be prov
brief advice and consultation.

§ 1611.9 Change in circumstances.

If an eligible client becomes
ble through a change in
stances, a recipient shall disc
representation if the change
cumstances is sufficiently lik
continue for the client to affo
vate legal assistance, and disc
ation is not inconsistent with
torney's professional responsibi

APPENDIX A OF PART 1611 LEGAL SERVICES CORPORATION POVERTY GUIDELINE

Size of family unit	All States but Hawaii and Alaska [1]	Alaska [2]	Hawaii [3]
1	7,212	9,012	8,312
2	9,662	12,075	11,125
3	12,112	15,137	13,937
4	14,562	18,200	16,750
5	17,012	21,262	19,562
6	19,462	24,325	22,375
7	21,912	27,387	25,187
8	24,362	30,450	28,000

[1] For family units with more than eight members, add $2,450 for each additional member in a family.

[2] For family units with more than eight members, add $3,062 for each additional member in a family.

[3] For family units with more than eight members, add $2,812 for each additional member in a family.

[53 FR 12018, Apr. 12, 1988]

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.
1612.1 Definitions.
1612.2 Legal assistance activities.
1612.3 Legislative activities in general.
1612.4 Legislative and administrative lobbying.
1612.5 Permissible activities on behalf of eligible clients.
1612.6 Permissible activities undertaken pursuant to request of public officials.
1612.7 Grassroots lobbying.
1612.8 Public demonstrations and activities.
1612.9 Training.
1612.10 Organizing.
1612.11 Accounting.
1612.12 Enforcement.
1612.13 Private funds.

AUTHORITY: Secs. 1006(b)(5), 1007(a) (5), (6) and (7), 1011, 1008(e), Legal Services Corporation Act of 1974, *as amended* (42 U.S.C. 2996e(b)(5), 2996f(a) (5), (6) and (7), 2996j, 2996g(e)); Pub. L. 95-431, 92 Stat. 1021; Pub. L. 96-68, 93 Stat. 416; Pub. L. 96-536, 94 Stat. 3166; Pub. L. 97-161, 96 Stat. 22; Pub. L. 97-377, 96 Stat. 1874; Pub. L. 98-166, 97 Stat. 1071; Pub. L. 99-180, 99 Stat. 1185.

SOURCE: 52 FR 28436, July 29, 1987, unless otherwise noted.

§ 1612.1 Definitions.

(a) "Adjudicatory proceeding", as used in this part, means a proceeding by a Federal, State, or local agency, commission, authority or government corporation which makes a determination that is of particular rather than general applicability, that affects private rights or interests, and that results in a final disposition, whether affirmative, negative, injunctive, or declaratory in form. The term does not include rulemaking but does include licensing.

(b) "Administrative lobbying", as used in this part, means any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State or local official, agency, commission, authority or government corporation.

(c) "Administrative representation", as used in this part, means administrative lobbying carried out on behalf of an eligible client.

(d) "Grassroots lobbying", as used in this part, means publicity or propaganda intended or designed to support or defeat legislation pending before Congress or before State, county, or municipal legislative bodies, including any commission, authority or government corporation with rulemaking authority, or intended or designed to influence any decision by a Federal, State, county, or municipal administrative body or intended or designed to influence any decision by the electorate on a measure submitted to it for a vote.

(e) "Legal assistance activities", as used in this part, means any activity—

(1) Carried out during working hours or while on official travel;

(2) Using resources provided by the Corporation or a recipient, directly or through a subrecipient; or

(3) That, in fact, provides legal advice or representation to an eligible client.

(f) "Legislation", as used in this part, means any action or proposal for action by Congress, by a State legislature, or by any other body of governmental, municipal or local officials, whether elected or appointed, (including any commission, authority or government corporation with rulemaking authority) formulating a rule for the future or formulating a statement of general or particular applicability and future effect which is designed to implement, interpret, or prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, rules, regulations, the ratification of treaties and intergovernmental agreements, approval of appointments and budgets, adoption of resolutions not having the force of law, and approval or disapproval of actions of the executive. It does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws (such as action taken by a local council sitting as a Board of Zoning Appeals). "Legislature" as used herein does not include any Indian Tribal Council.

(g) "Legislative activities", as used in this part, means administrative, legislative, and grassroots lobbying and liaison activities; but does not include adjudicatory proceedings or negotiations directly involving a client's legal rights or responsibilities with respect to a particular application, claim or case.

(h) "Legislative lobbying", as used in this part, means any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device directly or indirectly intended to influence any Member of Congress or any other Federal, State or local elected nonjudicial official—

(1) In connection with any Act, bill, resolution or similar legislation;

(2) In connection with any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in a legislative capacity. The term "similar procedure" as used in this part refers to legislative consideration of matters which by law must be determined by a vote of the electorate or matters relating to the structure of government itself, such as reapportionment;

(3) In connection with inclusion of any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or

(4) In connection with the conduct of oversight proceedings concerning the recipient or the Corporation.

(i) "Legislative representation
used in this part, means legislativ
bying carried out on behalf of an
ble client.

(j) "Liaison activities", as us
this part, means activities design
facilitate administrative, legislati
grassroots lobbying, and include
is not limited to, such activities
tending legislative sessions or co
tee hearings, gathering inform
regarding pending legislation, and
lyzing the effect of pending le
tion.

(k) "Political activities", as us
this part, means those activiti
tended either to influence the ma
as distinguished from the admin
tion, of public policy or to infl
the electoral process. Political
ties include favoring or opposin
rent or proposed public policy an
include administrative, legislative
grassroots lobbying.

(l) "Public policy", as used in
part, means an overall plan emb
the general goals and acceptabl
cedures of any governmental
Public policy includes but is not
ed to statutes, rules, and regul
already enacted by a governm
body.

(m) "Publicity or propaganda
used in this part, means any oral,
ten or electronically transmitted
munication or any advertisement
gram, letter, article, newslette
other printed or written matt
device which contains a direct s
tion, or, when taken as a
amounts to a direct suggestion
public at large or to persons outs
the recipient program (other t
client or group of clients cur
represented by a recipient with
to a matter directly related to th
islation, or their counsel or co-co
to contact public officials in supp
or in opposition to pending o
posed legislation, or to contribute
participate in any demonstr
march, rally, fundraising drive,
ing campaign, letter writing or
phone campaign for the purpose
fluencing the course of such l
tion. "Publicity or propaganda"
not include communications whi
limited solely to neutral reporti
the content or status of pendi

proposed legislation or the effect which such legislation may have on eligible clients or on their legal representation; provided, however, that such communications may not provide information about whom to contact or how to support or oppose such pending or proposed legislation.

(n) "Rulemaking", as used in this part, means an agency process for formulating, amending, or repealing legislation.

§ 1612.2 Legal assistance activities.

Except as hereinafter provided, the provisions of this part shall apply to all legal assistance activities carried out with funds made available by the Legal Services Corporation or private entities.

§ 1612.3 Legislative activities in general.

No funds made available by the Corporation shall be used to—

(a) Pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in political or legislative activities unless such dues are not used to engage in legislative activities for which LSC funds cannot be directly used. The burden shall be on each recipient to demonstrate through appropriate documentation that the prohibitions of this subparagraph have not been violated.

(b) Pay for transportation to legislative or administrative proceedings of persons other than employees, or law students directly engaged in the activities permitted under this section or witnesses entering appearances in such proceedings on behalf of clients of the recipient, except that this does not prohibit transportation of the client and the client's family where necessary and appropriate; this paragraph does not authorize payment of transportation expenses for employees not actually engaged in permitted legislative or administrative representation, unless they are being trained in how to handle administrative adjudicatory proceedings.

(c) Pay, in whole or in part, for the conduct of, or transportation to, an event if a primary purpose of the expenditure is to facilitate political or legislative activities or any activity which would be prohibited if conducted with funds made available by the Corporation;

(d) Pay for administrative or related costs associated with any activity prohibited by this part;

(e) Knowingly assist others to engage in legislative or political activities; provided, however, that this paragraph shall not be construed to prohibit the administrative or legislative representation permitted by § 1612.5; or

(f) Attend meetings of coalitions if a principal purpose of the meeting is to discuss or engage in legislative or political activities.

§ 1612.4 Legislative and administrative lobbying.

(a) None of the funds made available by the Legal Services Corporation may be used to pay for legislative lobbying as defined in § 1612.1(h)(2), (3), and (4).

(b) None of the funds made available by the Legal Services Corporation may be used to pay for legislative lobbying as defined in § 1612.1(h)(1) or for administrative lobbying as defined in § 1612.1(b), except as provided in §§ 1612.5 and 1612.6.

§ 1612.5 Permissible activities on behalf of eligible clients.

(a) An employee of a recipient may provide administrative representation for an eligible client in an adjudicatory proceeding or in negotiations directly involving that client's legal rights or responsibilities with respect to a particular application, claim or case.

(b) Notwithstanding anything in this part to the contrary, an employee of a recipient may provide legal assistance to a current eligible client in a rulemaking proceeding, consistent with the practices of the particular administrative official or body, on a particular application, claim or case directly involving the client's legal rights or responsibilities.

(c) An employee of a recipient may, upon the request of a current eligible client or clients, communicate directly with Federal, State or local elected officials for the sole purpose of bringing that client's specific and distinct legal problems to the attention of such officials. This provision authorizes written or oral communications notifying public officials or legislative committees of the client's problems and of the legal obstacles to the client's obtaining judicial or administrative relief; testimony before pertinent legislative committees relating to the legal problems of the client; or the provision of a legal analysis of the client's problems to officials. It does not authorize publicity or propaganda or any efforts to persuade members of the public to support or oppose the proposed legislation. Such communications may be made only if the project director or chief executive of such recipient has given prior written approval for such communications after having determined:

(1) That the client or each such client is in need of relief that can be provided by the official or the legislative body with which the official is associated;

(2) That appropriate judicial and administrative relief has been exhausted; and

(3) That such communications are not the result of participation in a coordinated effort to communicate with elected officials on the subject matter.

(d) No employee shall solicit a client for the purpose of making legislative or administrative representation possible.

(e) In connection with each communication authorized by paragraph (c) of this section, the project director shall maintain the following documentation:

(1) The content of each such communication if the communication is in writing;

(2) The director's written approval of such communication;

(3) A retainer in the form specified in § 1611.8, setting forth the specific legal interest of each client as identified by the client at whose request the communication was undertaken.

(f) The governing body of a recipient shall adopt a policy to guide the director of the recipient in determining when to approve a communication to a Federal, State or local official under paragraph (e) of this section. Th policy adopted shall:

(1) Consistent with restrictions o disclosure of confidential informatio imposed by applicable law, requi periodic reports to the governing bod on the communications approved;

(2) Ensure that staff does not solic requests or undertake communicatio with elected officials nor participate i a coordinated effort to provide communications on a particular subject;

(3) Require that, in determining th amount of effort to be expended i preparing the communication, the d rector take into account the recipient priorities in resource allocation.

(g) Notwithstanding the prohibitio in paragraph (c) of this section of communications to elected officials tha do more than bring a problem to th official's attention, a project directo may approve communications to elec ed officials requesting introduction o specific "private relief bills" as define by the legislative body to which th communication is addressed, or, if no defined, for purposes of this pa means bills allowing specificall named persons or groups to make or t be compensated for claims against government for which there is n other remedy. The documentation r quired under paragraph (e) of this se tion shall be maintained in connectio with such communications.

(h) Nothing in this or any other se tion is intended to prohibit an employee from—

(1) Communicating with a gover mental agency for the purpose of o taining information, clarification, interpretation of the agency's rule regulations, practices, or policies;

(2) Informing a current client abo a new or proposed statute, executi order, or administrative regulatio consistent with the provisions § 1612.7;

(3) Communicating directly or ind rectly with the Corporation for an purpose;

(4) Participating in meetings or ser ing on committees of bar association provided such participation does no include grassroots lobbying; or

(5) Informing a client of the client right to communicate directly with a elected official.

[52 FR 28436, July 29, 1987; 52 FR 28777, Aug. 3, 1987]

§ 1612.6 Permissible activities undertaken pursuant to request of public officials.

(a) To the extent compatible with meeting the demands for client service and priorities set by the recipient pursuant to Part 1620 of these regulations or to the extent compatible with the provision of support services to recipients relating to the delivery of legal assistance, an employee may respond to a request from a governmental agency, elected official, legislative body, committee, or member made to the employee or to a recipient to testify, draft, or review legislation, or to make representations to such agency, official, body, committee, or member on a specific matter. This exception for responses to officials does not authorize communication with anyone other than the requesting party or an agent or employee of such party.

(b) No employee of the recipient shall, directly or indirectly, solicit or arrange a request from any official to testify or otherwise make representations in connection with legislation.

(c) Recipients shall adopt procedures and forms to document compliance with this section. Such documentation shall include contemporaneous documentation by the recipient which states the type of representation or assistance requested by the public official and identifies the specific concern, regulation, legislation, or executive or administrative order to be addressed.

[52 FR 28436, July 29, 1987; 52 FR 28777, Aug. 3, 1987]

§ 1612.7 Grassroots lobbying.

(a) No funds made available by the Corporation or by private entities shall be used for grassroots lobbying.

(b) No funds made available by the Corporation or by private entities shall be used to support the preparation, production, or dissemination of any article, newsletter, or other publication or written matter or other form of mass communication which contains any reference to proposed or pending legislation unless—

(1) The publication does not contain any publicity or propaganda;

(2) The publication does not contain directions on how to lobby generally or on particular legislation;

(3) The recipient's project director, or his or her designee, has reviewed each publication produced by the recipient prior to its dissemination for conformity to these regulations;

(4) The recipient provides a copy of any such material produced by the recipient to the Corporation within 30 days after publication; and

(5) Such funds are used only for costs allocable to the preparation, production, or dissemination of such publications to the Corporation, recipients, recipient staff and board members, private attorneys representing eligible clients, and eligible clients currently represented by a recipient with regard to a matter directly related to the legislation; but if the recipient circulates the publication to the public at large, or eligible clients generally, any reference to pending or proposed legislation must be incidental to the topic of the publication.

§ 1612.8 Public demonstrations and activities.

(a) While carrying out legal assistance activities and while using resources provided by the Corporation, by private entities or by a recipient, directly or through a subrecipient, no person shall—

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(b) While carrying out legal assistance activities and while using resources provided by the Corporation, by private entities, or by a recipient, directly or through a subrecipient, no person shall at any time engage in or encourage others to engage in—

(1) Any rioting or civil disturbance;

(2) Any activity in violation of an outstanding injunction of any court of competent jurisdiction;

(3) Any other illegal activity; or

(4) Any intentional identification of the Corporation or any recipient with any political activity.

(c) Nothing in this section shall prohibit an attorney from—

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Taking such action on behalf of his client as may be required by his professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.9 Training.

(a) No funds made available by the Corporation or by private entities may be used for the purpose of supporting or conducting training programs that—

(1) Advocate particular public policies; or

(2) Encourage or facilitate political activities, labor or antilabor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking; or

(3) Disseminate information about such policies or activities.

(b) To the extent compatible with meeting the demands for client service and priorities set by the recipient pursuant to Part 1620 of these regulations or to the extent compatible with the provision of support services to recipients relating to the delivery of legal assistance, nothing in this section shall be construed to prohibit any training of attorneys or paralegal personnel necessary for preparing them—

(1) To provide adequate legal assistance to eligible clients;

(2) To advise any eligible client as to the nature of the legislative process in general as opposed to discussing a lobbying strategy for a particular bill;

(3) To inform any eligible client of his rights under any statute, order or regulation already enacted, or about the meaning or significance of particular bills; or

(4) To understand what activities are permitted or prohibited under relevant laws and regulations.

(c) No funds made available by the Corporation or by private entities may be used to pay for participation by any person or organization in training with
regard to political or legislative
ties, except for adjudicatory p
ings, or with regard to areas ir
program involvement is pro
pursuant to the provisions of t
of other applicable Federal lav
Corporation regulations, guidel
instructions.

§ 1612.10 Organizing.

(a) No funds made available
Corporation or by private entit
be used to initiate the formatio
act as an organizer of any asso
federation, labor union, coaliti
work, alliance, or any similar
No funds may be employed f
communication or any meeting
vocate that anyone organize
any organization. The term "
nication" does not include advic
an individual client during the
of legal consultation. This pa
shall not be construed to appl
formational meetings attend
marily by persons engaged in
livery of legal services at whic
mation about new developm
poverty law and pending cases
ters are discussed and shall no
to organizations composed exc
of eligible clients formed for
purpose of advising a legal
program about the delivery
services.

(b) To the extent compatib
meeting the demands for client
and priorities set by the recipi
suant to Part 1620 of these reg
or to the extent compatible w
provision of support services t
ents relating to the delivery
assistance, this section shall n
terpreted to prevent recipie
their employees from providi
advice or assistance to eligibl
who desire to plan, establish
ate organizations, such as by
ing articles of incorporation
laws.

§ 1612.11 Accounting.

(a) Recipients shall mainta
rate records documenting the
ture of funds for legislative a
These records shall docum
direct and indirect expenses,
sources of the funds supportin

islative activities, regardless of the sources of the funds employed.

(b) Recipients shall submit quarterly reports describing their legislative activities conducted pursuant to these regulations, together with such supporting documentation as specified by the Corporation, consistent with restrictions on disclosure of confidential or privileged information imposed by applicable law of any state or other jurisdiction. The Corporation may at any time specify the form in which these reports are to be submitted.

§ 1612.12 Enforcement.

(a) The Corporation shall have authority—

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this part; and

(2) To impose such sanctions as are appropriate (including but not limited to recovery of questioned costs) for the enforcement of this regulation against a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(b) The Corporation shall have authority in accordance with the procedures set forth in Parts 1606, 1618, 1623, 1625 and 1630 of these regulations to recover costs, suspend or terminate financial assistance, or deny refunding to a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(c) A recipient shall—

(1) Advise employees about their responsibilities under this part; and

(2) Establish procedures for determining whether an employee has violated a provision of this part; and shall establish a policy, a copy of which shall be transmitted to the Corporation, for determining the appropriate sanction to be imposed for a violation, including—

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for the enforcement of this regulation; and

(3) Inform the Office of Monitoring, Audit, and Compliance within 30 days of imposing any sanction on any person for violation of this part; and

(4) Make available to the Corporation the records of its investigation of any allegation of violations whether or not any sanctions were imposed. Such records shall be submitted on a quarterly basis to the Office of Monitoring, Audit, and Compliance.

§ 1612.13 Private funds.

(a) A recipient may use funds provided by private sources to engage in legislative or administrative lobbying if a government agency, elected official, legislative body, committee, or member thereof is considering a measure directly affecting activities under the Act of the recipient or the Corporation.

(b) A recipient may use private funds to engage in legislative activities (except for grassroots lobbying) at the request of a current eligible client of a recipient, to the extent such activities are necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities, but no recipient shall solicit a client for the purpose of making such representation possible.

(c) A recipient may use private funds to pay reasonable annual dues to organizations which are tax exempt under section 501(c)(3) of the Internal Revenue Code, provided, however, that such funds may be used only for purposes otherwise permitted by the Act and all regulations adopted pursuant thereto.

(d) Private funds provided for the provision of legal assistance to eligible clients may be used to support the preparation, production, or dissemination of any article, newsletter, or other publication or written matter or other form of mass communication which contains references to proposed or pending legislation so long as the publication does not contain any publicity or propaganda.

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

Sec.
1613.1 Purpose.
1613.2 Definition.
1613.3 Prohibition.
1613.4 Authorized representation.

AUTHORITY: Sec. 1007(b)(1); 42 U.S.C. 2996f(b)(1).

SOURCE: 43 FR 32775, July 28, 1978, unless otherwise noted.

§ 1613.1 Purpose.

This part is designed to insure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is required as part of an attorney's responsibilities as a member of the bar.

§ 1613.2 Definition.

"Criminal proceeding" means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated "criminal" by applicable law and punishable by death, imprisonment, or a jail sentence. A misdemeanor or lesser offense tried in an Indian tribal court is not a "criminal proceeding".

§ 1613.3 Prohibition.

Corporation funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by this part.

§ 1613.4 Authorized representation.

Legal assistance may be provided with respect to a criminal proceeding.

(a) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or

(b) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by recipient.

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.
1614.1 Purpose.
1614.2 General policy.
1614.3 Range of activities.
1614.4 Procedure.
1614.5 Prohibition of revolving litigatio funds.
1614.6 Waivers.
1614.7 Failure to comply.

AUTHORITY: Sec. 1007(a)(2)(C) and se 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 4 U.S.C. 2996f(a)(3)).

SOURCE: 50 FR 48591, Nov. 26, 1985, unles otherwise noted.

§ 1614.1 Purpose.

(a) This part is designed to ensur that recipients of Legal Services Corporation funds involve private attorneys in the delivery of legal assistanc to eligible clients. Except as provide hereafter, a recipient of Legal Service Corporation funding shall devote a amount equal to at least twelve an one-half percent (12½%) of the recipient's LSC annualized basic field awar to the involvement of private attorneys in such delivery of legal services this requirement is hereinafter sometimes referred to as the "PAI requirement". Funds received from the Corporation as one-time special grant shall not be considered in determinin a recipient's PAI requirement.

(b) Recipients of Native American o migrant funding shall provide opportunity for involvement in the deliver of services by the private bar in manner which is generally open t broad participation in those activitie undertaken with those funds, or shal demonstrate to the satisfaction of the Corporation that such involvement i not feasible.

(c) Because the Corporation's PAI requirement is based upon an effort to generate the most possible legal services for eligible clients from available, but limited, resources, recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

(d) As of January 1, 1986, the term "private attorney" as used in this Part means an attorney who is not a staff attorney as defined in § 1600.1 of these regulations.

(e) After the effective date of this regulation, no PAI funds shall be committed for direct payment to any attorney who for any portion of the previous two years has been a staff attorney as defined in § 1600.1 of these regulations; provided, however, that, for the remainder of the 1986 fiscal year, recipients may honor contractual arrangements made to such private attorneys if these arrangements were made before the effective date of this regulation; provided, further, however, that this paragraph shall not be construed to restrict the use of PAI funds in a *pro bono* or judicare project on the same terms that are available to other attorneys; and provided further, however, that this paragraph shall not be construed to restrict the payment of PAI funds as a result of work performed by an attorney who practices in the same firm with such former staff attorney.

[50 FR 48591, Nov. 26, 1985, as amended at 51 FR 21559, June 13, 1986]

§ 1614.2 General policy.

(a) This part implements the policy adopted by the Board of Directors of the Corporation which requires that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economic and efficient manner.

(b) In the case of recipients whose service areas are adjacent, coterminous or overlapping, the recipients may enter into joint efforts to involve the private attorneys in the delivery of legal services to eligible clients, subject to the prior approval of the Office of Field Services. In order to be approved the joint venture plan must meet the following conditions:

(1) The recipients involved in the joint venture must plan to expend at least twelve and one-half percent (12½%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, 12½% of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under § 1614.6;

(2) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and

(3) The joint PAI venture must provide an opportunity for involving private attorneys throughout the entire joint service area(s).

(c) Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§ 1614.3 Range of activities.

(a) Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients through programs such as organized *pro bono* plans, reduced fee plans, judicare panels, private attorney contracts, or those modified *pro bono* plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorney's fees through "revolving litigation fund" systems, as described in § 1614.5 of this part, shall neither be used nor funded under this part nor funded with any LSC support;

(b) Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to:

(1) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel;

co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and

(2) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

(c) The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

(1) The priorities established pursuant to Part 1620 of these regulations;

(2) The effective and economic delivery of legal assistance to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy.

(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys.

(d) Systems designed to provide direct services to eligible clients by private attorneys on either a *pro bono* or reduced fee basis, shall include at a minimum, the following components:

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

(4) Access by private attorneys to LSC recipient resources, including those of LSC national and state support centers, that provide back-up on

substantive and proc
the law.

(e) The recipient sh
compliance with this
financial systems and
maintaining support
tion to identify and ac
for costs related to
Such systems and rec
the requirements of th
Audit and Accounting
cipients and Auditors
the following characte

(1) They shall acc
and account for:

(i) The recipient's
overhead, staff, and s
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costs shall be allocated
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should be based on o
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(ii) Payments to pr
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submitted before paym
Encumbrances shall no
calculating whether a
met the requirement of

(iii) Contractual pay
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direct services to elig
behalf of the recipient
the provisions of this
concerning transfer of
PAI activities shall rec
funds be accounted for
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Audit and Accounting

cipients and Auditors and 45 CFR Part 1627;

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(2) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(3) In private attorney models, attorneys may be reimbursed for actual costs and expenses. Attorney's fees paid may not exceed 50% of the local prevailing market rate for that type of service.

(4) All records pertaining to a recipient's PAI requirements which do not contain client confidences or secrets as defined by applicable state law shall be made available for inspection and review by LSC auditors and monitors during regular business hours.

§ 1614.4 Procedure.

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)) and Part 1620 of the Regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

§ 1614.5 Prohibition of revolving litigation funds.

(a) A revolving litigation fund system is a system under which a recipient systematically encourages the acceptance of fee-generating cases as defined in § 1609.2 of these regulations by advancing funds to private attorneys to enable them to pay costs, expenses, or attorneys fees for representing clients.

(b) No funds received from the Legal Services Corporation shall be used to establish or maintain revolving litigation fund systems.

(c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys for costs and expenses, provided:

(1) The private attorney is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under the Act and under the Corporation's Regulations; and

(2) The private attorney has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.

(d) Nothing in this section shall prevent a recipient from recovering from a private attorney the amount advanced for any costs, expenses, or fees from an award to the attorney for representing an eligible client.

§ 1614.6 Waivers.

(a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by the Office of Field Services (OFS) when the recipient shows to the satisfaction of OFS that:

(1) Because of the unavailability of qualified private attorneys, an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by OFS when the recipient shows to the satisfaction of OFS that:

(1) The population of qualified private attorneys available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts too few qualified private attorneys are willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts,—including, but not limited to , communicating its problems expending the required amount to OFS and requesting and availing itself of assistance and/or advice from OFS regarding the problem—expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose current encumbrances and projec
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the requirement, but
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(6) If, in the reaso
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tivities, provided t
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through its PAI prog

(d) (1) A waiver of
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of the Audit Divis
such waiver will adv
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and 1614.2.

(2) As provided in
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rence of OFS; such
PAI subgrants shall
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creased PAI particip

(e) Waivers of the
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or some of the req
for a fiscal year.

(1) Applications f
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such applications m

Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All Waiver requests shall be addressed to the Office of Field Services (OFS) or the Audit Division as is appropriate under the preceding provisions of this Part. The Corporation shall make a written response to each such request postmarked not later than thirty (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

§ 1614.7 Failure to comply.

(a) If a recipient fails to comply with the expenditure required by this part and if that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's support payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12½%) of the recipient's basic field award.

(b) If a recipient fails with good cause to seek a waiver, or applies for but does not receive a waiver, or receives a waiver of part of the PAI requirement and does not expend the amount required to be expended, the PAI expenditure requirement for the ensuing year shall be increased for that recipient by an amount equal to the difference between the amount actually expended and the amount required to be expended.

(c) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services in the recipient's service area through PAI programs. Disbursement of these funds shall be made through a competitive solicitation and awarded on the basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people.

(d) The withholding of funds under this section shall not be construed as a termination of financial assistance under Part 1606 of these regulations or a denial of refunding under Part 1625 of these regulations.

PART 1615—RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

Sec.
1615.1 Purpose.
1615.2 Prohibition.
1615.3 Application of this part.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1)).

SOURCE: 41 FR 38508, Sept. 10, 1976, unless otherwise noted.

§ 1615.1 Purpose.

This part prohibits the provision of legal assistance in an action in the nature of habeas corpus seeking to collaterally attack a criminal conviction.

§ 1615.2 Prohibition.

Except as authorized by this part, no Corporation funds shall be used to provide legal assistance in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action

(a) Is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and

(b) Alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.

§ 1615.3 Application of this part.

This part does not prohibit legal assistance—

(a) To challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to Corporation regulations; or

(b) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all

attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the primary responsibility of the recipient to provide legal assistance to eligible clients in civil matters.

PART 1616—ATTORNEY HIRING

Sec.
1616.1 Purpose.
1616.2 Definition.
1616.3 Qualifications.
1616.4 Recommendations.
1616.5 Preference to local applicants.
1616.6 Equal employment opportunity.
1616.7 Language ability.

AUTHORITY: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4); (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 2996e(b)(4)).

SOURCE: 41 FR 38509, Sept. 10, 1976, unless otherwise noted.

§ 1616.1 Purpose.

This part is designed to promote a mutually beneficial relationship between a recipient and the local Bar and community, and to insure that a recipient will choose highly qualified attorneys for its staff.

§ 1616.2 Definition.

"Community", as used in this part, means the geographical area most closely corresponding to the area served by a recipient.

§ 1616.3 Qualifications.

A recipient shall establish qualifications for individual positions for attorneys providing legal assistance under the Act, that may include, among other relevant factors:

(a) Academic training and performance;

(b) The nature and extent of prior legal experience;

(c) Knowledge and understanding of the legal problems and needs of the poor;

(d) Prior working experience in the client community, or in other programs to aid the poor;

(e) Ability to communicate with persons in the client community, including, in areas where significant numbers of eligible clients speak a language other than English as their principal language, ability to spea
that language; and

(f) Cultural similarity with th
client community.

§ 1616.4 Recommendations.

(a) Before filling an attorney pos
tion, a recipient shall notify the org
nized Bar in the community of the e
istence of a vacancy, and of the qua
fications established for it, and see
recommendations for attorneys wh
meet the qualifications established f
the position.

(b) A recipient shall similarly noti
and seek recommendations from oth
organizations, deemed appropriate b
the recipient, that have knowledge
the legal needs of persons in the co
munity unable to afford legal assis
ance.

§ 1616.5 Preference to local applicants.

When equally qualified applican
are under consideration for an att
ney position, a recipient shall gi
preference to an applicant residing
the community to be served.

§ 1616.6 Equal employment opportunity.

A recipient shall adopt employme
qualifications, procedures, and polici
that meet the requirements of applic
ble laws prohibiting discrimination
employment, and shall take affirm
tive action to insure equal emplo
ment opportunity.

§ 1616.7 Language ability.

In areas where a significant numb
of clients speak a language other th
English as their principal language,
recipient shall adopt employment po
cies that insure that legal assistan
will be provided in the langua
spoken by such clients.

PART 1617—CLASS ACTIONS

Sec.
1617.1 Purpose.
1617.2 Definition.
1617.3 Approval required.
1617.4 Standards for approval.

AUTHORITY: Secs. 1006(d)(5), 1007(a)(
1007(a)(3), 1008(e); (42 U.S.C. 2996e(d)(
2996f(a)(1), 2996(a)(3), 2996g(e)).

SOURCE: 41 FR 51607, Nov. 23, 1976, unless otherwise noted.

§ 1617.1 Purpose.

This part is intended to promote responsible, efficient, and effective use of Corporation resources. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1617.2 Definition.

"Class action" means a class suit, class action appeal, or amicus curiae class action, as defined by statute or the rules of civil procedure of the court in which an action is filed.

§ 1617.3 Approval required.

No class action may be undertaken by a staff attorney without the express approval of the director of the recipient, acting in accordance with policies established by the governing board.

§ 1617.4 Standards for approval.

The governing body of a recipient shall adopt policies to guide the director of the recipient in determining whether to approve class action litigation. The policies adopted:

(a) Shall not prohibit class action litigation when appropriate to provide effective representation to a client or a group of similarly situated clients;

(b) Shall not require case-by-case approval of class action litigation by the governing body;

(c) Shall give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act or Corporation regulations; and

(d) Shall not interfere with the professional responsibilities of an attorney to a client.

PART 1618—ENFORCEMENT PROCEDURES

Sec.

1618.1 Purpose.
1618.2 Definition.
1618.3 Complaints.
1618.4 Duties of Recipients.
1618.5 Duties of the Corporation.

AUTHORITY: Secs. 1006(b)(1), 1006(b)(2), 1006(b)(5), 1007(d), 1008(e); (42 U.S.C. 2996e(b)(1), 2996e(b)(2), 2996e(b)(5), 2996f(d), 2996g(e)).

SOURCE: 41 FR 51608, Nov. 23, 1976, unless otherwise noted.

§ 1618.1 Purpose.

In order to insure uniform and consistent interpretation and application of the Act, and to prevent a question of whether the Act has been violated from becoming an ancillary issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with the Act.

§ 1618.2 Definition.

As used in this part, "Act" means the Legal Services Corporation Act or the rules and regulations issued by the Corporation.

§ 1618.3 Complaints.

A complaint of a violation of the Act by a recipient or an employee may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of Recipients.

A recipient shall:

(a) Advise its employees of their responsibilities under the Act; and

(b) Establish procedures, consistent with the notice and hearing requirements of Section 1011 of the Act, for determining whether an employee has violated a prohibition of the Act; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(1) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(2) Suspension and termination of employment; and

(3) Other sanctions appropriate for enforcement of the Act, but

(c) Before suspending or terminating the employment of any person for violating a prohibition of the Act, a recipient shall consult the Corporation to insure that its interpretation of the Act is consistent with Corporation policy.

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§ 1618.5 Duties of the Corporation.

(a) Whenever there is reason to believe that a recipient or an employee may have violated the Act, or failed to comply with a term of its Corporation grant or contract, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take appropriate remedial or disciplinary action to insure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient pursuant to the procedures set forth in Part 1612, or may take other action to enforce compliance with the Act.

PART 1619—DISCLOSURE OF INFORMATION

Sec.
1619.1 Purpose.
1619.2 Policy.
1619.3 Referral to the Corporation.
1619.4 Exemptions.

Authority: Sec. 1006(b)(1), (42 U.S.C. 2996e(b)(1)); sec. 1008(e), (42 U.S.C. 2996g(e)).

Source: 42 FR 4848, Jan. 26, 1977, unless otherwise noted.

§ 1619.1 Purpose.

This part is designed to insure disclosure of information that is a valid subject of public interest in the activities of a recipient.

§ 1619.2 Policy.

A recipient shall adopt a procedure for affording the public appropriate access to the Act, Corporation rules, regulations and guidelines, the recipient's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the recipient determines should be disclosed. The procedure adopted shall be subject to approval by the Corporation.

§ 1619.3 Referral to the Corporation.

If a person requests information, not required to be disclosed by this part, that the Corporation may be required to disclose pursuant to Part 1602 of this chapter implementing the Freedom of Information Act, the recipient shall either provide the information or inform the person seeking it how to request it from the Corporation.

§ 1619.4 Exemptions.

Nothing in this part shall require disclosure of:

(a) Any information furnished to a recipient by a client;

(b) The work product of an attorney or paralegal;

(c) Any material used by a recipient in providing representation to clients;

(d) Any matter that is related solely to the internal personnel rules and practices of the recipient; or

(e) Personnel, medical, or similar files.

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

Sec.
1620.1 Purpose.
1620.2 Procedure.
1620.3 Access.
1620.4 Implementation.
1620.5 Annual review.

Authority: Sec. 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996f(a)(2)).

Source: 49 FR 19658, May 9, 1984, unless otherwise noted.

§ 1620.1 Purpose.

This part is designed to ensure that a recipient, through policy and plans adopted by its governing body, takes into account the views of eligible clients, staff, the private bar and other interested persons in establishing priorities for allocating its resources in an economical and effective manner, consistent with the purposes and requirements of the Act and other provisions of Federal Law.

[49 FR 19658, May 9, 1984, as amended at 50 FR 48595, Nov. 26, 1985]

§ 1620.2 Procedure.

(a) The governing body of a recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall:

(1) Include an effective appraisal of the needs of eligible clients in the geographic areas served by the recipient, and their relative importance, based on information received from potential or current eligible clients solicited in a manner reasonably calculated to obtain the attitude of all significant segments of the client population. The appraisal shall also include input from the recipient's employees, governing body members, the private bar, and other interested persons, and to the extent feasible should include outreach to eligible clients which may include the use of such techniques as questionnaires and surveys. In addition to substantive legal problems, the appraisal shall address the need for outreach, training of the recipient's employees, and support services;

(2) Insure an opportunity for participation by all significant segments of the client community and the recipient's employees in the setting of priorities, and in the annual review required by § 1620.5, and provide an opportunity for comment by interested members of the public.

(b) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The appraisal described in paragraph (a)(1) of this section;

(2) The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(3) The resources of the recipient;

(4) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(5) The availability of other sources of training, support, and outreach services;

(6) The relative importance of particular legal problems of the individual clients of the recipient;

(7) The susceptibility of particular problems to solution through legal processes;

(8) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served; and

(9) Whether legal efforts will result in efficient and economic delivery of legal services.

[49 FR 19658, May 9, 1984, as amended at 50 FR 48595, Nov. 26, 1985]

§ 1620.3 Access.

A recipient shall allocate resources consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, including § 1620.2 of these regulations, and shall make a reasonable effort to provide that all potentially eligible clients in the recipient's service area have reasonably equal access to similar types of services. If the governing body of the recipient so desires, the types of services may vary so as to take into account different priorities in different parts of the recipient's service area, a higher incidence of a particular kind of legal problem, the considerably higher costs of providing services, or differences in individual client financial resources. Consistent with the methods of delivery that are most effective and economical and the factors of § 1620.2(b), allocation of resources shall be reasonably proportional to the distribution of eligible clients within the recipient's service area, but this part shall not be interpreted to require any rigid standard for dollar expenditures or number of clients served.

[50 FR 48595, Nov. 26, 1985]

§ 1620.4 Implementation.

The governing body of a recipient shall establish policies and procedures that assure clients and the Corporation that cases which are accepted for representation of eligible clients substantially comply with the priorities adopted by the recipient.

[49 FR 19658, May 9, 1984, as amended at 50 FR 48596, Nov. 26, 1985]

§ 1620.5 Annual review.

Priorities shall be set periodically and shall be reviewed by the governing body of the recipient at least annually. Each recipient shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities, the date of the most recent appraisal, the timetable for the future appraisal of needs and evaluation of priorities, mechanisms which will be utilized to ensure effective client participation in priority-setting, and any changes in priorities. The report shall also include a copy of the case acceptance policies and procedures established under § 1620.4 of these regulations as a result of the priority review and assessment. The following factors shall be among those considered in determining whether the recipient's priorities should be changed:

(a) The extent to which the objectives of the recipient's priorities have been accomplished;

(b) Changes in the resources of the recipient;

(c) Changes in the size, distribution, or needs of the eligible client population; and

(d) Implementation of § 1620.3.

[49 FR 19658, May 9, 1984, as amended at 50 FR 48596, Nov. 26, 1985]

PART 1621—CLIENT GRIEVANCE PROCEDURE

Secs.

1621.1 Purpose.
1621.2 Grievance Committee.
1621.3 Complaints about legal assistance.
1621.4 Complaints about denial of assistance.

AUTHORITY: Sec. 1006(b)(1), 41 U.S.C. 2996e(b)(1); sec. 1006(b)(3), 42 U.S.C. 2996e(b)(3); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1).

SOURCE: 42 FR 37551, July 22, 1977, unless otherwise noted.

§ 1621.1 Purpose.

By providing an effective remedy for a person who believes that legal assistance has been denied improperly, or who is dissatisfied with the assistance provided, this part seeks to insure that every recipient will be accountable to those it is expected to serve, and will provide the legal assistance required by the Act.

§ 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and client members of the governing body in approximately the same proportion in which they are on the governing body.

§ 1621.3 Complaints about legal assistance.

(a) A recipient shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered.

(b) The procedures shall provide at least:

(1) Information to a client at the time of the initial visit about how to make a complaint, and

(2) Prompt consideration of each complaint by the director of the recipient, or the director's designee, and, if the director of the recipient is unable to resolve the matter,

(3) An opportunity for a complainant to submit an oral and written statement to a grievance committee established by the governing body. The complainant may be accompanied by another person. Upon request, the recipient shall transcribe a brief written statement, dictated by the complainant, for inclusion in the recipient's complaint file.

(c) A file containing every complaint and a statement of its disposition shall be preserved for examination by the Corporation. The file shall include any written statement submitted by the complainant.

§ 1621.4 Complaints about denial of assistance.

A recipient shall establish a simple procedure for review of a decision that a person is financially ineligible, or that assistance is prohibited by the Act or Corporation Regulations, or by priorities established by the recipient pursuant to section 1620. The procedure shall include information about how to make a complaint, adequate notice, an opportunity to confer with the director of the recipient or the director's designee, and, to the extent practicable, with a representative of the governing body.

PART 1622—PUBLIC ACCESS TO MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

1622.1 Purpose and scope.
1622.2 Definitions.
1622.3 Open meetings.
1622.4 Public announcement of meetings.
1622.5 Grounds on which meetings may be closed or information withheld.
1622.6 Procedures for closing discussion or withholding information.
1622.7 Certification by the General Counsel.
1622.8 Records of closed meetings.
1622.9 Emergency procedures.
1622.10 Report to Congress.

AUTHORITY: Sec. 1004(g), Pub. L. 95-222, 91 Stat. 1619, (42 U.S.C. 2996c(g)).

SOURCE: 49 FR 30940, Aug. 2, 1984, unless otherwise noted.

§ 1622.1 Purpose and scope.

This part is designed to provide the public with full access to the deliberations and decisions of the Board of Directors of the Legal Services Corporation, committees of the Board, and state Advisory Councils, while maintaining the ability of those bodies to carry out their responsibilities and protecting the rights of individuals.

§ 1622.2 Definitions.

"Board" means the Board of Directors of the Legal Services Corporation.

"Committee" means any formally designated subdivision of the Board established pursuant to § 1601.27 of the By-Laws of the Corporation.

"Council" means a state Advisory Council appointed by a state Governor or the Board pursuant to section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f).

"Director" means a voting member of the Board or a Council. Reference to actions by or communications to a "Director" means action by or communications to Board members with respect to proceedings of the Board, committee members with respect to proceedings of their committees, and council members with respect to proceedings of their councils.

"General Counsel" means the General Counsel of the Corporation, or, in the absence of the General Counsel of the Corporation, a person designated by the President to fulfill the duties of the General Counsel or a member designated by a council to act as its chief legal officer.

"Meetings" means the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business, but does not include deliberations about a decision to open or close a meeting, a decision to withhold information about a meeting, or the time, place, or subject of a meeting.

"Public observation" means the right of any member of the public to attend and observe a meeting within the limits of reasonable accommodations made available for such purposes by the Corporation, but does not include any right to participate unless expr[illegible] invited by the Chairman of the [illegible] of Directors, and does not inclu[illegible] right to disrupt or interfere with the disposition of Corporation business.

"Publicly available" for the purposes of § 1622.6(e) means to be procurable either from the Secretary of the Corporation at the site of the meeting or from the Office of Government Relations at Corporation Headquarters upon reasonable request made during business hours.

"Quorum" means the number of Board or committee members authorized to conduct Corporation business pursuant to the Corporation's By-laws, or the number of council members authorized to conduct its business.

"Secretary" means the Secretary of the Corporation, or, in the absence of the Secretary of the Corporation, a person appointed by the Chairman of the meeting to fulfill the duties of the Secretary, or a member designated by a council to act as its secretary.

§ 1622.3 Open meetings.

Every meeting of the Board, a committee or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5.

§ 1622.4 Public announcement of meetings.

(a) Public announcement shall be posted of every meeting. The announcement shall include: (1) The time, place, and subject matter to be discussed;

(2) Whether the meeting or a portion thereof is to be open or closed to public observation; and

(3) The name and telephone number of the official designated by the Board, committee, or council to respond to requests for information about the meeting.

(b) The announcement shall be posted at least seven calendar days before the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In the event that such a determination is made, public announcement shall be posted at the earliest practicable time.

(c) Each public announcement shall be posted at the offices of the Corporation in an area to which the public has access, and promptly submitted to the FEDERAL REGISTER for publication. Reasonable effort shall be made to communicate the announcement of a Board or committee meeting to the chairman of each council and the governing body and the program director of each recipient of funds from the Corporation, and of a council meeting to the governing body and program director of each recipient within the same State.

(d) An amended announcement shall be issued of any change in the information provided by a public announcement. Such changes shall be made in the following manner:

(1) The time or place of a meeting may be changed without a recorded vote.

(2) The subject matter of a meeting, or a decision to open or close a meeting or a portion thereof, may be changed by recorded vote of a majority of the Directors that Corporation business so requires and that no earlier announcement of the change was possible. An amended public announcement shall be made at the earliest practicable time and in the manner specified by § 1622.4 (a) and (c). In the event that changes are made pursuant to § 1622.4(d)(2), the amended public announcement shall also include the vote of each Director upon such change.

[49 FR 30940, Aug. 2,1984, as amended at 50 FR 30714, July 29,1985]

§ 1622.5 Grounds on which meetings may be closed or information withheld.

Except when the Board or council finds that the public interest requires otherwise, a meeting or a portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld, if the Board or council determines that such meeting or portion thereof, or disclosure of such information, will more probably than not:

(a) Relate solely to the internal personnel rules and practices of the Corporation;

(b) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552): Provided, That such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular types of matters to be withheld;

(c) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(d) Involve accusing any person of a crime or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigatory records compiled for the purpose of enforcing the Act or any other law, or information which if written would be contained in such records, but only to the extent that production of such records or information would: (1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(g) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Corporation action, except that this paragraph shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(h) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case involving a determination on the record after opportunity for a hearing.

§ 1622.6 Procedures for closing discussion or withholding information.

(a) No meeting or portion of a meeting shall be closed to public observation, and no information about a meeting shall be withheld from the public, except by a recorded vote of a majority of the Directors with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information that is proposed to be withheld.

(b) A separate vote of the Directors shall be taken with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information which is proposed to be withheld; except, a single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(c) Whenever any person's interest may be directly affected by a matter to be discussed at a meeting, the person may request that a portion of the meeting be closed to public observation by filing a written statement with the Secretary. The statement shall set forth the person's interest, the manner in which that interest will be affected at the meeting, and the grounds upon which closure is claimed to be proper under § 1622.5. The Secretary shall promptly communicate the request to the Directors, and a recorded vote as required by paragraph (a) of this section shall be taken if any Director so requests.

(d) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the vote of each Director participating in the vote shall be recorded and no proxies shall be allowed.

(e) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the Corporation shall, within one business day, make publicly available:

(1) A written record of the vote of each Director on the question;

(2) A full written explanation of the action closing the meeting, portion(s) thereof, or series of meetings, with reference to the specific exemptions listed in § 1622.5, including a statement of reasons as to why the specific discussion comes within the cited exemption and a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation.

[49 FR 30940, Aug. 2,1984, as amended at 50 FR 30714, July 29,1985]

§ 1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall publicly certify that, in his opinion, the meeting may be so closed to the public and shall state each relevant exemption. A copy of the certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Corporation.

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of meeting or any portion thereof closed to the public pursuant to paragraph (h) of § 1622.5, a transcript, a recording, or a set of minutes shall be made.

Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefor, including a description of each Director's views expressed on any item and the record of each Director's vote on the question. All documents considered in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by paragraph (a) of this section shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate Regional Office for a council meeting, for a period of two years after the meeting, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting was held, whichever occurs later.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by paragraph (a) of this section that do not contain information that may be withheld under § 1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this Part may be pursued in accordance with Part 1602 of these regulations.

§ 1622.9 Emergency Procedures.

If, in the opinion of the Chairman, the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting that the Chairman or presiding officer of the Board shall have the authority to have such members of the public who are responsible for such acts or conduct removed from the meeting.

[50 FR 30714, July 29,1985]

§ 1622.10 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552(b), including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. 552b, including any costs assessed against the Corporation in such litigation.

PART 1623—PROCEDURES GOVERNING SUSPENSION OF FINANCIAL ASSISTANCE

Sec.

1623.1 Purpose.
1623.2 Definition.
1623.3 Grounds for suspension.
1623.4 Suspension.
1623.5 Time extension and waiver.
1623.6 Interim funding.

AUTHORITY: Secs. 1006(b)(1), 1011 (42 U.S.C. 2996e(b)(1), (2996j).

SOURCE: 43 FR 21883, May 22, 1978, unless otherwise noted.

§ 1623.1 Purpose.

By providing procedures for prompt review that will insure informed deliberation by the Corporation when there is reason to believe that financial assistance to a recipient should be suspended, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

§ 1623.2 Definition.

"Suspension" means any action temporarily suspending or curtailing financial assistance to a recipient in whole or in part prior to the expiration of the recipient's current grant from or contract with the Corporation.

§ 1623.3 Grounds for suspension.

Financial assistance provided to a recipient may be suspended when:

(a) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of the recipient's current grant from or contract with the Corporation; or

(b) There has been substantial failure by a recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation, or guideline issued by the Corporation.

(c) In the absence of unusual circumstances, suspension shall not take place unless the Corporation has given the recipient notice of its failure and an opportunity to take effective corrective action.

§ 1623.4 Suspension.

(a) When there is reason to believe that financial assistance to a recipient should be suspended, the Corporation shall serve a written preliminary determination on the recipient stating the grounds and effective date for the proposed suspension, and identifying, with reasonable specificity, any facts or documents relied upon as justification for the suspension. The preliminary determination shall also specify any corrective action that the recipient must take to avoid or end the suspension.

(b) The preliminary determination shall also advise the recipient that it may, within 5 days of receipt of the preliminary determination, request an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not become effective. The Corporation shall designate the place for such a meeting and shall set the time at least 5 days after the recipient's request is received. The preliminary determination shall also advise the recipient that, within 10 days of its receipt of the preliminary determination and without regard to whether it requested an informal meeting, it may submit written materials in opposition to the proposed suspension.

(c) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at the informal meeting, if one is requested. If after considering these materials the Corporation concludes that the recipient has failed to show that the suspension should not become effective, it may suspend financial assistance to the recipient in whole or in part and under such terms and conditions as it deems proper.

(d) Written notice of the suspension shall be promptly transmitted to the recipient, and the suspension shall become effective when the notice is received by the recipient or on such later date as is specified in the notice.

(e) The Corporation employee ordering suspension may at any time rescind or modify the terms of the suspension and, on written notice to the recipient, reinstate the suspension without further proceedings under this part. In no event shall the total time of suspension exceed 30 days, unless the Corporation and the recipient agree to a continuation of the suspension for an additional period of time and without further proceedings under this part.

§ 1623.5 Time extension and waiver.

(a) Any period of time provided in this part, except the total time for suspension, may, upon good cause shown and determined, be extended by the person issuing the preliminary determination under § 1623.4 or by the President.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 days of the preliminary determination.

(c) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation, or by the President upon good cause shown and determined.

§ 1623.6 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to continued funding. Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level and legal assistance activities under the Act.

PART 1624—PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP

Sec.

1624.1 Purpose.
1624.2 Application.
1624.3 Definitions.
1624.4 Discrimination prohibited.
1624.5 Accessibility of legal services.
1624.6 Employment.
1624.7 Self-evaluation.
1624.8 Enforcement.

AUTHORITY: 49 U.S.C. 794; 42 U.S.C. 2996f(a) (1) and (3).

SOURCE: 44 FR 55178, Sept. 25, 1979, unless otherwise noted.

§ 1624.1 Purpose.

The purpose of this part is to assist and provide guidance to legal services programs supported in whole or in part by Legal Services Corporation funds in removing any impediments that may exist to the provision of legal assistance to handicapped persons eligible for such assistance in accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794 and with Sections 1007(a) (1) and (3) of the Legal Services Corporation Act, as amended, 42 U.S.C. Sections 2996f(a) (1) and (3), with respect to the provision of services to and employment of handicapped persons.

§ 1624.2 Application.

This part applies to each legal services program receiving financial assistance from the Legal Services Corporation.

§ 1624.3 Definitions.

As used in this part, the term:

(a) "Legal services program" means any recipient, as defined by § 1600.1 of these regulations, or any other public or private agency, institution, organization, or other entity, or any person to which or to whom financial assistance is extended by the Legal Services Corporation directly or through another agency, institution, organization, entity or person, including any successor, assignee, or transferee of a legal services program, but does not include the ultimate beneficiary of legal assistance;

(b) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property;

(c)(1) "Handicapped person" means any person who: (i) Has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment;

(2) As used in paragraph (a)(1) of this section the phrase:

(i) "Physical or mental impairment" means: (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; The phrase includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism;

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iii) "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(iv) "Is regarded as having an impairment" means: (A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a legal services program as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or (C) has none of the impairments defined in paragraph (c)(2)(i) of this section but is treated by a legal services program as having such an impairment;

(d) "Qualified handicapped person" means: (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; (2) with respect to other services, a handicapped person who meets the eligibility requirements for the receipt of such services from the legal services program.

§ 1624.4 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by any legal services program, directly or through any contractural or another arrangement.

(b) A legal services program may not deny a qualified handicapped person the opportunity to participate in any of its programs or activities or to receive any of its services provided at a facility on the ground that the program operates a separate or different program, activity or facility that is specifically designed to serve handicapped persons.

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the purpose or effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d)(1) A legal services program that employs a total of fifteen or more persons, regardless of whether such persons are employed at one or more locations, shall provide, when necessary, appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program's services. A legal services program is not required to maintain such aids at all times, provided they can be obtained on reasonable notice.

(2) The Corporation may require legal services programs with fewer than fifteen employees to provide auxiliary aids where the provision of such aids would not significantly impair the ability of the legal services program to provide its services.

(3) For the purpose of § 1624.4(d) (1) and (2), auxiliary aids include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, and other aids for persons with impaired hearing, speech or vision.

(e) A legal services program shall take reasonable steps to insure that communications with its applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(f) A legal services program may not deny handicapped persons the opportunity to participate as members of or in the meetings or activities of any planning or advisory board or process established by or conducted by the legal services program, including but not limited to meetings and activities conducted in response to the requirements of Part 1620 of these regulations.

§ 1624.5 Accessibility of legal services.

(a) No qualified handicapped person shall, because a legal services program's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by any legal services program.

(b) A legal services program shall conduct its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to handicapped persons in the most integrated setting appropriate.

(c) A legal services program shall, to the maximum extent feasible, insure that new facilities that it rents or purchases are accessible to handicapped persons. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to the appropriate Regional Office certifying that the facilities covered by the lease or contract will be accessible to handicapped persons, or if the facilities will not be accessible, a detailed description of the efforts the program made to obtain accessible space, the reasons why the inaccessible facility was nevertheless selected, and the specific steps that will be taken by the legal services program to insure that its services are accessible to handicapped persons who would otherwise use that facility. After a statement certifying facility accessibility has been submitted, additional statements need not be resubmitted with respect to the same facility, unless substantial changes have been made in the facility that affect its accessibility.

(d) A legal services program shall ensure that new facilities designed or constructed for it are readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the altered facilities readily accessible to and usable by handicapped persons.

§ 1624.6 Employment.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that insures that discrimination on the basis of handicap does not occur,
and may not limit, segregate, or clas
fy applicants or employees in any w
that adversely affects their opportu
ties or status because of handicap.

(c) The prohibition against discrim
nation in employment applies to t
following activities:

(1) Recruitment, advertising, a
the processing of applications for e
ployment;

(2) Hiring, upgrading, promotio
award of tenure, demotion, transfe
layoff, termination, right of retu
from layoff, and rehiring;

(3) Rates of pay or any other for
of compensation and changes in co
pensation;

(4) Job assignments, job classific
tions, organizational structures, po
tion descriptions, lines of progressio
and seniority lists;

(5) Leaves of absence, sick leave,
any other leave;

(6) Fringe benefits available
virtue of employment, whether or n
adminstered by the legal services pr
gram;

(7) Selection and financial suppo
for training, including apprenticeshi
professional meetings, conference
and other related activities, and sele
tion for leaves of absence to purs
training;

(8) Employer sponsored activities, i
cluding social or recreational pr
grams; and

(9) Any other term, condition,
privilege of employment.

(d) A legal services program may n
participate in any contractual or oth
relationship with persons, agencies, o
ganizations or other entities such a
but not limited to, employment and r
ferral agencies, labor unions, organiz
tions providing or administering frin
benefits to employees of the legal ser
ices program, and organizations pr
viding training and apprenticeshi
programs, if the practices of suc
person, agency, organization, or oth
entity have the effect of subjecti
qualified handicapped applicants
employees to discrimination prohibi
ed by this paragraph.

(e) A legal services program sha
make reasonable accommodation
the known physical or mental limit
tions of an otherwise qualified hand
capped applicant or employee unle

the accommodation would impose an undue hardship on the operation of the program.

(1) For purposes of this paragraph (e), reasonable accommodation may include (i) making facilities used by employees readily accessible to and usable by handicapped persons, and (ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against handicapped persons, and shall insure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 45 CFR 84.14(a) through (d)(2). The Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this part.

(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of handicap.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of handicap.

§ 1624.7 Self-evaluation.

(a) By January 1, 1980, a legal services program shall evaluate, with the assistance of interested persons including handicapped persons or organizations representing handicapped persons, its current facilities, policies and practices and the effects thereof to determine the extent to which they may or may not comply with the requirements of this part and the cost of structural or other changes that would be necessary to make each of its facilities accessible to handicapped persons.

(b) The results of the self-evaluation, including steps the legal services program plans to take to correct any deficiencies revealed and the timetable for completing such steps, shall be made available for review by the Corporation and interested members of the public.

§ 1624.8 Enforcement.

The procedures described in Part 1618 of these regulations shall apply to any alleged violation of this part by a legal services program.

PART 1625—DENIAL OF REFUNDING

Sec.
1625.1 Purpose.
1625.2 Definitions.
1625.3 Grounds for denial of refunding.
1625.4 Notice.
1625.5 Request for hearing.
1625.6 Hearing examiner.
1625.7 Pre-hearing procedures.
1625.8 Conduct of the hearing.
1625.9 Burden of persuasion.
1625.10 Initial decision.
1625.11 Final decision.
1625.12 Time and waiver.
1625.13 Right to counsel.
1625.14 Reimbursement.
1625.15 Interim funding.
1625.16 Termination funding.

AUTHORITY: Sec. 1006(b)(1) and (3), 1007(a)(1), (3) and (9), 1007(d) and (e), 1008(e), and 1011(2) of the Legal Services Corporation Act, as amended, (42 U.S.C. 2996e(b)(1) and (3), 2996f (a)(1), (3) and (9), 2996f(d) and (e), 2996g(e) and 2996(j); Pub. L. 98-166, 97 Stat. 1071; Pub. L. 98-411, 98 Stat. 1545; Pub. L. 99-180, 99 Stat. 1136.

Source: 51 FR 15899, Apr. 29, 1986, unless otherwise noted.

§ 1625.1 Purpose.

This part is intended to provide timely, full, fair, and impartial procedures for allowing a recipient to show cause why its funding should be continued when the Corporation has made a preliminary determination that an application for refunding of a grant or contract should be denied. This part is further intended to provide for completion of these procedures in a timely manner so that funding issues are expeditiously resolved so as to avoid unnecessary and protracted disruption in the delivery of legal services to eligible clients.

§ 1625.2 Definitions.

"Denial of refunding" means a decision that, after the expiration of a grant or contract, a recipient:

(a) Will not be provided financial assistance; or

(b) Will have its annual level of financial support reduced to an extent that is not required either by a change of law, or a reduction in the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding, or by the uniform application of a statistical formula for the reallocation of funding among the members of the same class, and is more than 10 percent below the recipient's annual level of financial assistance under its current grant or contract.

§ 1625.3 Grounds for denial of refunding.

Refunding may be denied when:

(a) Denial is required by, or will implement, a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class, or a funding policy, standard, or criterion approved by the Board; or

(b) There has been significant failure by a recipient to comply with a provision of law, or a rule, regulation, guideline, or instruction issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation; provided, however, that a recipient's failure to comply with any of the requirements in this paragraph at a time when the requirement was not in effect or at a time more than 6 years prior to the date the recipient receives notice of the failure pursuant to § 1625.4 shall not be a basis for denial of refunding; or

(c) There has been significant failure by a recipient to use its resources to provide economical and effective legal assistance of highly quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation, or guideline issued by the Corporation. If the recipient could not reasonably be expected to have prevented or corrected its failure without notice from the Corporation and an opportunity to have taken effective corrective action, refunding shall not be denied for this cause unless the Corporation has given the recipient such notice and opportunity; or

(d) The Corporation finds that another organization, whether a current recipient or not, could better serve eligible clients in the recipient's service area.

§ 1625.4 Notice.

When there is reason to believe that refunding should be denied, the Corporation shall serve a written notice upon the recipient, and the Chairperson of its governing board, which shall include:

(a)(1) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of the factual grounds for the denial of refunding;

(2) It the ground specified in § 1625.3(d) is asserted, the statement shall identify the other organization and specify the basis for the Corporation's assertion that it could better and more economically serve eligible clients;

(b) An affidavit or affidavits covering the direct testimony of each witness upon whom Corporation's counsel relies; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein; sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be appended thereto; depositions, if available, shall be included;

(c) A memorandum of points of law and authorities showing with particularity:

(1) That the affidavit(s), paper(s), and deposition testimony specified in paragraph (b) of this section constitute evidence of such discrete factual allegations as were identified in paragraph (a)(1) of this section and as are sufficient under applicable law to support denial of refunding;

(2) The legal standards, rulings, statutes, regulations, or decisional law upon which the Corporation relies in advancing its theories or arguments in support of denial of refunding with particularized reference and adequate citation to competent authority; and

(3) As proximately as reasonably possible, the logical nexus and points of reference among (i) affidavit(s), paper(s), and deposition testimony specified in paragraph (b) of this section,

(ii) The factual grounds as identified in enumerated paragraphs specified by paragraph (a)(1) of this section, and

(iii) The legal theories or arguments advanced by the Corporation to justify denial of refunding.

(d) A directive to show cause, signed by an official of the Corporation other than the President, which shall inform the recipient that, if within 30 days of the recipient's receipt of this notice the Corporation receives a request for a hearing as specified in § 1625.5 of this part and accompanied or preceded by all documents specified by paragraph (f) of this section, a hearing will be held; the directive shall identify:

(1) The name, business address, telephone number, and brief summary of professional qualifications of the hearing examiner and a statement that the examiner supports the purposes of the Act;

(2) The name, address, and phone number of the Corporation's counsel;

(3) The time and place of the prehearing conference and the last date upon which it may be held, which date shall be no more than 37 days after the date of the notice; and

(4) The time and place of the hearing and the last date on which it can start, which date shall be no more than 44 days after the date of the notice;

(e) A copy of these procedures as contained in Part 1625.

(f) A requirement, signed by an official of the Corporation other than the President, may be included that the recipient produce a specific document or documents in its possession, custody, or control no later than the time the recipient requests a hearing or produce a person in its employ to testify in a pre-hearing deposition at a date (subsequent to the recipient's request for a hearing), place, and time to be specified in the requirement or to be available to testify at the show cause hearing; provided, however, that the recipient may serve a motion within 10 days of its receipt of the notice, for the hearing examiner to limit or quash the requirement; the hearing examiner shall rule on such motion within 7 days; if an objection to the hearing examiner, filed pursuant to § 1625.6(b) has delayed such ruling, the hearing examiner shall promptly rule when the objection is resolved.

§ 1625.5 Request for hearing.

Within 30 days of receipt of the notice, the recipient shall serve upon the Corporation a request for a hearing, which must include:

(a) A short and plain statement in numbered paragraphs, that is either an admission or a denial of each of the numbered paragraphs in the notice; any averment in the notice which is not specifically denied is deemed admitted;

(b) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of all factual grounds on which the recipient will rely to show cause why refunding should not be denied;

(c) An affidavit or affidavits covering the direct testimony of each witness upon whom recipient's counsel relies and appending all exhibits to such testimony; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein; sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be appended thereto; depositions, if available, shall be included; the recipient, must set forth by affidavit, sworn or certified copies of papers, and depositions, specific facts showing that there is a genuine issue of material fact for a show cause hearing;

(d) A memorandum of points and authorities showing that the Corporation has failed to provide affidavits or other evidence sufficient to deny refunding or that the affidavit(s) specified in paragraph (c) of this section constitute evidence of facts necessary to show cause why refunding should not be denied under applicable legal standards.

(e) The recipient may serve a request on the hearing examiner that the Corporation be required, upon sufficient notice, to produce a specific document or documents in the possession, custody, or control of the Corporation or of another organization identified under § 1625.4(a)(2) or produce a person in its employ (or that of such other organization) to testify in a prehearing deposition at a date, place, and time to be specified in the requirement or to be available to testify at the show cause hearing.

§ 1625.6 Hearing examiner.

(a) The hearing examiner shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of notice of the name of the hearing examiner, the recipient may file a written notice that it objects to the hearing examiner on the basis that this person does not fit the criteria of paragraph (a) of this section or has made statements or taken actions indicating personal bias against the recipient. The recipient will be granted a 5-day extension for presenting the basis of its objection if it files a timely notice of objection and a statement as to why it is unable with due diligence to present the basis of its objection without the extension.

(c) The President shall consider the recipient's objection(s) with any supporting documentation and, within 10 days thereafter, issue a written notice of a decision either to retain or replace the hearing examiner.

(d) No objection to the appointment of a hearing examiner may be made unless presented in the manner specified in this section.

§ 1625.7 Pre-hearing procedures.

(a)(1) On or before the date it requests a hearing, the recipient may serve a motion for an interim decision that the notice fails to state an adequate basis for the denial of its application for refunding. The hearing examiner shall rule on such motion within 7 days and shall grant the motion if he or she finds that the facts sworn to in the notice do not provide an adequate basis to deny the application for refunding.

(2) If the recipient fails to make a request for hearing in such a timely fashion that it is received by the Corporation within 30 days of receipt of the notice by the recipient, the recipient shall be deemed to have waived its right to a hearing and a final decision shall be entered by the President.

(3) If the recipient makes timely request for a hearing, the hearing examiner may, *sua sponte* or on the motion of a party, review the notice, the request for a hearing, and all documents submitted by the recipient pursuant to requirement(s) issued pursuant to § 1625.4(f) to determine before the date set for the hearing whether there is any genuine issue as to any material fact and whether a party is entitled to summary judgment or partial summary judgment as a matter of law. If, considering the papers in the light most favorable to the opposing party, the hearing examiner finds that the parties' submissions, admissions on file, affidavits, and any other matter on the record show that there is no genuine issues as to any material fact and that either party is entitled to summary judgment as a matter of law,

the hearing examiner shall issue to the President a written initial decision pursuant to § 1625.10(b). If such a decision with a partial summary judgment should become final pursuant to § 1625.11, the hearing examiner may exclude further evidence relevant only to an issue or issues resolved by such decision.

(b) If the recipient makes a timely request for a hearing, a pre-hearing conference shall be held within 7 days. At least 24 hours prior to the pre-hearing conference, each party shall cause to be delivered in person to the hearing examiner and counsel for the opposing party a list including all its affiants it intends to call for direct testimony, all the other party's affiants it will require the party to produce for cross-examination, and all other persons who are to testify on direct or cross-examination. For each person on its list, the party will indicate whether the person will be called for direct testimony or for cross-examination and whether the party will require the opposing party to produce the witness (and, if so, the basis). At the pre-hearing conference, the matters to be considered shall include:

(1) Whether summary judgment or partial summary judgment ought to be issued;

(2) Proposals to define and narrow the issues;

(3) Efforts to stipulate the facts, in whole or in part;

(4) The order of presentation of exhibits and witnesses, along with their number and identity;

(5) The possibility of presenting the case on written submission or oral argument;

(6) Any necessary variation in the date, time, and place of the hearing;

(7) The possibility of settlement; and

(8) Such other matters as may be appropriate.

(c) (1) The hearing examiner may establish specific procedures consistent with this part for conduct of the show cause hearing.

(2) The hearing examiner may require or permit written submission of additional statements discussing any matter described in paragraph (b) of this section as well as any other arguments and supporting material at any time prior to completion of the show cause hearing.

(3) The hearing examiner may issue appropriate protective orders to prohibit the parties from disseminating evidence to other than specifically named individuals or such other restrictions as may be necessary to protect client confidences.

(4) The hearing examiner may not consider any issue not necessary for a determination of whether the recipient's refunding application will be denied.

(5) The only two parties to the proceeding will be the Corporation and the recipient; provided, however, that a state support center which is a subgrantee or a subrecipient as of the time of the effective date of this regulation may be joined as a party by the hearing examiner but only during the remaining term of such existing subgrant or other agreement.

(6) The hearing examiner shall require each party to make arrangements for the testimony and cross-examination of the witnesses and affiants it will rely upon and bear the expenses associated with the testimony.

(d) (1) The hearing examiner may, at any time prior to the completion of the hearing, require either party, upon sufficient notice, to produce a relevant document in its possession, custody or control; the hearing examiner may require either party to produce a person in its employ to testify at the hearing.

(2) The hearing examiner shall not issue such requirements at the request of the Corporation's counsel if request is not made within seven days of the Corporation's receipt of the request for a hearing, or at the request of the recipient, if request is not made at or before the time it makes a request for a hearing, unless the requesting party can show that it could not have anticipated its need to request the requirement and failure to issue the requirement would cause a manifest injustice.

(3) In proceedings under § 1625.3(d), the hearing examiner may likewise require the Corporation to produce a document in the possession, custody or control of another organization identified pursuant to § 1625.4(a)(2) or a person in the employ of such other or-

ganization, subject to the sanctions set forth in § 1625.8(f).

(4) The hearing examiner shall rule on motions respecting requirements for the production of documents or witnesses within 7 days.

§ 1625.8 Conduct of the hearing.

(a) The show cause hearing shall be held within 7 days after the pre-hearing conference in or near a city having an airport with regularly scheduled airline service and convenient to the Corporation, to the recipient, the community it serves, and to witnesses determined by the hearing examiner to be necessary for the show cause hearing.

(b) The hearing examiner shall preside over the show cause hearing, avoid delay, maintain order, conduct a full and fair show cause hearing, and insure that an adequate record of the facts and issues is made.

(c) The show cause hearing shall be open to the public, unless, in the interests of justice or maintaining order, the hearing examiner shall determine otherwise.

(d) (1) Since each party will have presented the direct testimony of its witnesses by their affidavits, the show cause hearing will be limited, except as hereinafter provided, to cross-examination of the other party's affiants, examination of those employee(s) of the other party from whom the party was unable, despite due diligence, to obtain affidavit(s) or pre-hearing deposition(s), and rebuttal testimony (if allowed).

(2) The recipient will proceed first and will be allowed a total of up to 7 days to cross-examine the Corporation's affiant(s) or to present testimony from the Corporation's or the other organization's employee(s).

(3) The Corporation will then be allowed a total of up to 7 days to cross-examine the recipient's affiant(s), to present testimony from the recipient's employee(s), or to adduce rebuttal testimony.

(4) The recipient will then be allowed a total of up to one day of surrebuttal testimony.

(5) During the time allotted to a party, it may present its affiant(s) for direct testimony limited to the scope of the respective affidavits(s) and for cross-examination by the opposing party at that time.

(6) The hearing examiner will allow a total of up to one day divided evenly between the parties for closing arguments.

(e) (1) If either party fails, without good cause, to produce a person or document required to be produced under §§ 1625.4(f), 1625.5(e), or 1625.7(d), the hearing examiner may make a finding adverse to the party or any lesser determination.

(2) If a document is withheld on the basis of privilege, the hearing examiner may require the party to provide a version of the document that does not contain privileged information, explain the basis of the withholding, and, if it appears that the privilege is not asserted in good faith or is asserted in error, require production of the document for *in camera* inspection. After such inspection, the hearing examiner may issue such finding or order as the facts may warrant. The hearing examiner shall not disclose to the President of the Corporation information on which a claim of privilege or confidentiality is made.

(3) A recipient may neither introduce into the record nor rely upon any statement by a witness, any document, or other evidence if the Corporation, subsequent to the effective date of this regulation, had requested the recipient to arrange for that witness to cooperate in an interview or to produce the document or other evidence prior to issuance of the notice, unless the recipient is able to show good cause for its failure to comply with the request at an earlier date than it did.

(4) No adverse inference may be made if a party fails to produce a document which is not in the party's possession, custody, or control or that of another organization that is actually controlled by the party (or, for the Corporation, another organization identified under § 1625.4(a)(2)); no adverse inference may be made if a party fails to produce a witness that is not an employee of the party or of another organization that is actually controlled by the party or, for the

Corporation, another organization identified under § 1625.4(a)(2).

(f) Technical rules of evidence shall not apply. The hearing examiner shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) (1) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(2) The validity of rules, regulations, guidelines and instructions duly published under § 1008(e) of the Act may be challenged only in a complete brief served no later than the request for a hearing; no argument which could have been included in such a brief, but was not, may be raised at a later time.

(h) The hearing will be recorded at Corporation expense. The Corporation will send one copy of the transcript to the recipient and the hearing examiner as soon as it is received.

(i) At the discretion of the hearing examiner, the recipient and the Corporation may be required or allowed to submit post-hearing briefs or proposed findings and conclusions. The recipient's brief shall be served within 5 days of the close of the hearing and the Corporation's 4 days thereafter. Either party should note any relevant transcript errors in an addendum to its post-hearing brief (or if no brief will be submitted, in a letter submitted within the time limit set for a brief; if the transcript or a part of the transcript is not received 4 or more days before the time set for its brief, errors must be noted within 4 days of receipt of the transcript or part of the transcript).

(j) The transcript and any post-hearing briefs or letters will become part of the record.

(k) The Federal Rules of Civil Procedure and the Administrative Procedure Act shall provide guidance for all actions under this part when relevant procedures or rules therein are not inconsistent with the provisions of this part or of relevant laws specifically applicable to such an action.

§ 1625.9 Burden of persuasion.

The recipient shall have the ultimate burden of persuasion by a preponderance of the evidence on the record that the application for refunding should not be denied. If the Corporation has asserted, as a ground for the denial of the application for refunding, the grounds specified in:

(a) Section 1625.3(a), the recipient must establish by a preponderance of the evidence on the record that it is not in a class of recipients affected by the law, the Corporation's rule, regulation, guideline, or instruction, or a funding policy, standard, or criterion approved by the Board or that the proposed action is not required by or will not implement such policy;

(b) Section 1625.3(b), the recipient must establish by a preponderance of the evidence on the record that:

(1) It has complied during the specified period of time in all respects with each specified provision of law, with each specified provision of the Corporation's rules, regulations, guidelines, and instructions, and with each specified term and condition of current or prior grants from, or contracts with, the Corporation as specified in the notice; or

(2) All of its violations are merely minor, technical or insignificant;

(c) Section 1625.3(c), the recipient must establish by a preponderance of the evidence on the record that:

(1) It has provided economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation, or guideline issued by the Corporation; or

(2) The Corporation has not given the recipient prior notice of its failure and an opportunity to take effective corrective action and the recipient could not reasonably be expected to have prevented or corrected its failure without notice from the Corporation and an opportunity to have taken effective corrective action before it received the notice specified in § 1625.4 of this part;

(d) Section 1625.3(d), the recipient must establish by a preponderance of the evidence on the record that it could serve eligible clients in its service area better and more economically than the other organization specified in the notice.

§ 1625.10 Initial decision.

(a) Within 16 days of the completion of the hearing, the hearing examiner shall cause an initial decision to be served upon the parties:

(1) Granting refunding; or

(2) Granting refunding subject to any modification or condition that may appear necessary and appropriate on the basis of information disclosed at the hearing or adduced from the record; or

(3) Denying refunding.

(b) The initial decision shall be a part of the record and shall include a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record.

(c) Findings of fact shall be based solely on evidence disclosed at the hearing or adduced from the record or on matters of which official notice is taken.

§ 1625.11 Final decision.

(a) If neither the Corporation's counsel nor the recipient requests review by the President, the initial decision shall become final 7 days after receipt by the recipient.

(b) The recipient or the Corporation's counsel may seek review by the President of the initial decision. A request shall be made in writing to the President and the other party shall be served within 7 days of receipt by the party of the initial decision, and shall state in detail the reasons for seeking review.

(c) Within 7 days after receipt of a request for review of the initial decision, the President shall adopt, modify or reverse the initial decision, or shall direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1625.10(b).

(d) A decision by the President shall become final upon service on the recipient.

§ 1625.12 Time and waiver.

(a) *Computation of time.* In computing any period of time prescribed or allowed by this part or by order of the President or the hearing examiner, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. All periods shall otherwise include Saturdays, Sundays, and legal holidays. A deadline for a party or the hearing examiner to submit a document is met only if the document is actually received by counsel for the other party and by the hearing examiner by the end of the relevant time period.

(b) *Enlargement of time.* The President or the hearing examiner may enlarge any period of time on agreement of the parties if, and only if, the President or the hearing examiner makes a determination in writing or on the record either that:

(1) The enlargement will not prevent completion of the hearing within 60 days from receipt of the notice by the recipient or prevent the President from reaching a final decision—with at least 7 days to consider the request for review—within 90 days from receipt of notice by the recipient; or

(2) The existence of extraordinary circumstances require the enlargement of time to prevent manifest injustice.

(c) *Reduction of time.* On agreement of the parties and the hearing examiner, any period of time may be shortened.

(d) Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding of its grant or contract.

(e) Any provision of the rules in this part, excepting those in § 1625.12(b), may be waived or modified:

(1) By the hearing examiner with the assent of the recipient and counsel for the Corporation; or

(2) By the President for good cause shown.

§ 1625.13 Right to counsel.

At a hearing under § 1625.8, the Corporation and the recipient each shall be entitled to be represented by counsel, or by an employee.

§ 1625.14 Reimbursement.

If refunding is granted after a notice has been issued under § 1625.4, a recipient shall be entitled to receive reimbursement from the Corporation for reasonable and actual expenses including attorney's fees up to the hourly equivalent of the rate of level V of the executive schedule specified in Section 5316, of Title 5, United States Code, that were required in connection with proceedings under this part, to the extent it has prevailed and where the hearing examiner finds the Corporation's position to have been substantially without merit.

§ 1625.15 Interim funding.

Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities, for eligible clients under the Act.

§ 1625.16 Termination funding.

After a final decision to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the professional responsibility of the recipient and the recipient's attorneys to their present clients.

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.
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AUTHORITY: Sec. 1008(e) Pub. L. 93-355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 97-377, 96 Stat. 1874.

SOURCE: 48 FR 28092, June 20, 1983, unless otherwise noted.

§ 1626.1 Purpose.

This part is designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance, to provide guidelines for referral of ineligible persons, and to protect the confidentiality of information obtained from clients and prospective clients. This part does not apply to any case or matter in which assistance is not being provided with funds appropriated under Pub. L. 97-377.

§ 1626.2 Definitions.

As used in this part the term—

(a) "Eligible alien" means an alien who meets the requirements of § 1626.4(a).

(b) "Ineligible alien" means an alien who does not meet the requirements of § 1626.4(a) and who is consequently determined not to be eligible to receive legal assistance under Pub. L. 97-377.

(c) "Rejected" refers to an application for adjustment of status that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal.

§ 1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.

(a) *General.* No funds made available to a recipient by the Corporation under the authority of Pub. L. 97-377 shall be used to provide legal services for or on behalf of any person unless that person is a citizen of the United States or an eligible alien, except as authorized in this part.

(b) *Prohibited Legal Assistance "for" an Ineligible Alien.* (1) To provide legal assistance "for" an ineligible alien is equivalent to furnishing legal assistance to a client and it shall be deemed to be coextensive with accepting an ineligible alien as a client. Consequently, all recipients are prohibited from using fiscal year 1983 Corporation funds to pay any costs connected with furnishing legal assistance to clients who are ineligible aliens.

(2) Normal intake procedures and referral of ineligible alien clients by the same procedures used to refer other classes of ineligible clients are excepted from this prohibition. If a referral is not possible, an ineligible alien client may not be represented if any fiscal year 1983 funds are used in such representation. If such an ineligible alien client is referred, a recipient may not participate further in the case (using fiscal year 1983 funds).

(3) The provisions of Section 1010(c) of the Legal Services Corporation Act do not apply to the expenditure of funds to represent ineligible aliens. Such aliens may be represented if all costs of such representation, including staff time, are funded from non-Corporation sources.

(c) *Prohibited Legal Assistance "on Behalf of" an Ineligible Alien.* To provide legal assistance "on behalf of" an ineligible alien is to render legal assistance to an eligible client which directly benefits an ineligible alien and does not benefit the eligible client.

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is a resident of the United States and who is within one of the following categories shall be eligible for legal services:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by section 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a) (15) and (20));

(2) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of twenty-one years of such a citizen and who has filed an application for adjustment of status to permanent resident under the Immigration and Nationality Act, and such application has not been rejected;

(3) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157 relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), or who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity; or

(4) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)).

(b) An alien who is not within one of the eligibility categories defined in § 1626.4(a) shall not be eligible for legal services. Categories of ineligible aliens include but are not limited to:

(1) Aliens present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5) relating to parolee admissions); or

(2) Aliens admitted into the United States as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), including:

(i) Ambassadors and other diplomatic officers and employees, embassy attendants and servants, and their immediate families;

(ii) Tourists and temporary business visitors;

(iii) Aliens in transit through the United States or going to and from the United Nations;

(iv) Alien crewmen from foreign vessels and aircraft who enter the United

States temporarily and intend to depart on their vessels or aircraft;

(v) Alien traders and investors present in the U.S. pursuant to treaties of commerce and navigation, and their immediate families;

(vi) Foreign students who enter the United States to study at academic institutions, and their spouses and minor children;

(vii) Officials, employees, and representatives of international organizations, and their immediate families;

(viii) Temporary workers, trainees, and persons of distinguished ability and their spouses and minor children,

(ix) Members of the foreign press, radio, film, and other media, and their spouses and children;

(x) Participants in State Department-sponsored exchange programs, and their spouses and minor children;

(xi) Fiances and fiancees of United States citizens who enter the United States solely to conclude valid marriage, and their minor children;

(xii) Employees of United States corporations or businesses based in another country who enter the United States to work for the same employers, and their spouses and minor children;

(xiii) Foreign students who enter the United States to study at vocational or nonacademic institutions, and their spouses and minor children.

§ 1626.5 Verification of citizenship and eligible alien status.

(a) A citizen seeking representation shall attest in writing in a form approved by the Corporation to the fact of his or her United States citizenship. Verification of citizenship shall not be required unless a recipient has reason to doubt that a person is a United States citizen. A recipient shall accept the original or a certified copy of any of the following documents as evidence of citizenship:

(1) United States passport;

(2) Birth certificate;

(3) Naturalization certificate;

(4) United States Citizenship Identification Card (INS Form I-197);

(5) Commuter Status Card (INS Form I-178);

(6) Baptismal certificate showing place of birth within the United States and a date of baptism within two months after birth.

If a person is unable to produce any of the above documents, he or she may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

(b) An alien seeking representation shall submit appropriate documents to verify eligibility. A recipient shall accept originals of any of the following documents as proof of eligibility:

(1) An alien in the category specified in § 1626.4(a)(1) shall present an Alien Registration Receipt Card (INS Forms I-151, I-551, or AR-3a), Temporary Evidence of Lawful Admission for Permanent Residence (INS Form I-181B), or a valid passport and immigrant visa.

(2) An alien in the category specified in § 1626.4(a)(2) shall present the following documents:

(i) the fee receipt issued to the alien by the Immigration and Naturalization Service (INS) at the time that the Application for Status as Permanent Resident (INS Form I-485) was filed; a copy of the Application for Status as Permanent Resident accompanied by a notarized statement, signed by the alien that such form was filed with INS; a copy of the Application for Immigrant Visa & Alien Registration (Department of State Form FS-510) accompanied by a notarized statement, signed by the alien that such form was filed with a consulate office; or a copy of the Application for Suspension of Deportation (INS Form I-256A) accompanied by a notarized statement, signed by the alien that such form was filed with INS; and

(ii) a copy of the alien's marriage certificate accompanied by proof of the spouse's U.S. citizenship; a copy of the United States birth certificate, baptismal certificate, adoption decree or other documents demonstrating that the alien is the parent of a United States citizen under the age of 21; a copy of the alien's birth certificate, baptismal certificate, adoption decree, or other documents demonstrating that the alien is a child under the age of 21, accompanied by proof that the alien's parent is a United States citizen; or in lieu of the above, a copy of the Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (INS Form I-130) containing information that demonstrates that the alien is related to such a United States citizen spouse, parent, or child, accompanied by a notarized statement that such form was filed with INS.

(3) An alien in the category specified in § 1626.4(a)(3) shall present an Arrival-Departure Record (INS Form I-94) marked "section 207" or "Refugee" (if claiming refugee status), "section 208" or "Asylum" (if claiming asylee status), or "section 203(a)(7)" or "Conditional entry" (if claiming conditional entrant status).

(4) An alien in the category specified in § 1626.4(a)(4) shall present an Arrival-Departure Record (INS Form I-94) marked "section 243(h)," or a court order or letter signed by an immigration judge stating that the Attorney General is withholding deportation of the alien.

(c) The following documents shall not be considered evidence of eligible alien status:

(1) Nonimmigrant Visa

(2) Arrival-Departure Record (INS Form I-94) marked with any code from "A" through "M" for nonimmigrants, or marked "section 212(d)(5)" for parolees

(3) Crewman's Landing Permit (INS Form I-95A)

(4) Mexican Border Visitors Permit (INS Form I-144)

(5) Nonresident Alien Canadian Border Crossing Card (INS Form I-185)

(6) Nonresident Alien Mexican Border Crossing Card (INS Form I-186)

(7) Nonresident Alien Canadian Border Crossing Identification Card (unnumbered).

(d) A recipient shall upon request furnish each person seeking legal assistance with a list of the documents described in this Section. Persons applying for legal assistance are responsible for producing the appropriate documents to verify eligibility.

(e) In an emergency, legal services may be provided prior to compliance with all the requirements of § 1626.5 (a) through (d).

(1) If it is not feasible for a citizen or an alien to come to the recipient's office or otherwise physically transmit documentation to the recipient before commencement of representation, such required information as can be obtained orally shall be recorded by the recipient and written documentation shall be submitted as soon as possible.

(2) If an alien is physically present, but cannot produce required documentation, he or she shall make a written statement identifying the category listed in § 1626.4(a) under which he or she claims eligibility and the documents that will be produced to verify that status; this documentation shall be submitted as soon as possible.

(3) Recipients shall adhere strictly to the same criteria for emergency assistance used in their general determination of priorities and shall use the procedures of § 1626.5(e) only in cases meeting these criteria.

(4) Recipients shall inform clients accepted under these procedures that only limited, emergency legal assistance may be provided them without satisfactory documentation and that failure or inability to produce satisfactory documentation will compel the recipient to discontinue representation consistent with the recipient's professional responsibilities as soon as the emergency no longer exists.

(f) No verification is required when the only service provided is brief advice and consultation by telephone.

§ 1626.6 Disposition of cases involving ongoing representation of ineligible aliens.

(a) A recipient may not use funds available to it under the authority of Pub. L. 97-377 to provide legal assistance to ineligible aliens; other alternatives must be used to dispose of pending cases in which the client is an ineligible alien. Generally, three alternatives are available:

(1) Referral to alternative counsel who can provide adequate representation;

(2) Withdrawal from pending judicial or administrative proceedings where permission to withdraw can be obtained under the rules of procedure of the tribunal; or

(3) Continuance of representation supported by funds available to the recipient either from non-Corporation sources or from unexpended carryover balances of prior year Corporation funds. As such other funds will normally be limited, referral or discontinuance of representation should be chosen wherever not inconsistent with an attorney's professional responsibilities.

(b) (1) Where referral or discontinuance of representation are not possible and no other funds are available, the recipient may permit a staff attorney to complete the case (or bring it to a stage where referral or discontinuance is possible) on an uncompensated basis. In such instances, the attorney may use the necessary minimum of recipient overhead support, but direct expenditures of Pub. L. 97-377 funds will not be permitted.

(2) In any such circumstances, a recipient shall maintain documentation clearly differentiating the time the attorney used on an uncompensated basis from his or her paid time and establishing the approximate amount of any overhead services allocable to completion of the case.

§ 1626.7 Change in circumstances.

(a) A recipient shall not use funds made available to it under the authority of Pub. L. 97-377 to provide legal assistance for or on behalf of an alien if:

(1) The alien becomes an ineligible alien due to a change in circumstances after representation has commenced;

(2) Representation of an ineligible alien was commenced due to an erroneous eligibility determination made by the recipient; or

(3) Representation of an ineligible alien was commenced due to false information provided by the alien to the recipient.

(b) A recipient shall discontinue representation supported by funds authorized by Pub. L. 97-377 under the circumstances described in § 1626.7(a) provided discontinuance is not inconsistent with the attorney's professional responsibilities. In discontinuing representation, a recipient shall follow the procedures set out in § 1626.6. In the event of discovery of false Information relating to eligibility as set forth in § 1626.7(a)(3), steps to discontinue representation shall be taken immediately.

§ 1626.8 Records.

Programs shall keep records of whether a client or prospective client claims to be a citizen or an alien, unless that person was found to be ineligible for services for reasons other than ineligible alien status. For all individuals seeking legal assistance, recipients shall keep copies of all documents given to them to establish eligibility, except in instances in which copying said documents is impossible or illegal. Such records shall be kept whether the individual was found to be a citizen, an eligible alien, or an ineligible alien. If an alien is found ineligible, or if records cannot be copied, a record of documentation (or lack thereof) may be kept in lieu of copies of said documentation.

§ 1626.9 Use and confidentiality of records pertaining to determination of eligible alien status.

(a) All records pertaining to determination of the eligibility of an alien for legal assistance shall be available (with deletion of names and personal identification) for review by the Corporation of recipient's actions and procedures in determining the eligibility of the alien for legal services. Such records shall not be released by the Corporation or by any recipient to any third party except in statistical form, nor may they be used for any other purpose than that stated in this subsection. This subsection shall not prevent release to Congress of information specifically requested by Congress which the Corporation determines is not prejudicial to the interests of the client.

(b) Release of any such record by a recipient, except to the Corporation or under court order, shall subject the recipient to appropriate sanctions by the Corporation.

(c) Such records shall be retained for a minimum of three years or until resolution of all audit questions pertaining thereto, whichever period is longer. Recipients shall keep a statistical record of the number of aliens found eligible and ineligible and the number of persons found eligible who subsequently were discovered to have been ineligible.

§ 1626.10 Special eligibility questions.

(a) *Micronesia.* The residents of the Trust Territory of the Pacific Islands (Micronesia) currently receive legal assistance under the Legal Services Corporation Act. As Congress has expressed no intention to exclude them, the Corporation deems all citizens and permanent residents of Micronesia eligible to receive legal assistance, provided they are otherwise eligible under the Act.

(b) *Cross-Border Indian Tribes.* (1) All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(2) Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

PART 1627—SUBGRANTS, FEES AND DUES

Sec.
1627.1 Purpose.
1627.2 Definitions.
1627.3 Requirements for all subgrants.
1627.4 Fees and dues.
1627.5 Contributions.
1627.6 Transfers to other recipients.
1627.7 Training and education activities.
1627.8 Tax sheltered annuities, retirement accounts and pensions.

AUTHORITY: Secs. 1006(b)(1), 1007(a)(3), and 1008(e) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e)).

SOURCE: 48 FR 54209, Nov. 30, 1983, unless otherwise noted.

§ 1627.1 Purpose.

In order to promote accountability for Corporation funds and the observance of the provisions of the Legal Services Corporation Act and the Corporation's regulations adopted pursuant thereto, it is necessary to set ou the rules under which Corporatio funds may be transferred by recipien to other organizations (includin other recipients).

§ 1627.2 Definitions.

(a) "Recipient" as used in this pa means any recipient as defined in se tion 1002(6) of the Act *and* any gran ee or contractor receiving funds fro the Corporation under sectio 1006(a)(1)(B) or 1006(a)(3) of the Ac

(b)(1) "Subrecipient" shall mean an entity that accepts Corporation fun from a recipient under a grant co tract, or agreement to conduct certai activities specified by or supported b the recipient related to the recipient programmatic activities. Such activ ties would normally include those tha might otherwise be expected to b conducted directly by the recipien itself, such as representation of elig ble clients, or which provide dire support to a recipient's legal assis ance activities or such activities a client involvement, training or sta support activities. Such activitie would not normally include those tha are covered by a fee-for-service a rangement, such as those provided b a private law firm or attorney repr senting a recipient's clients on a co tract or judicare basis, except that an such arrangement involving more tha $25,000 shall be included. Subrecipien activities would normally also not i clude the provision of goods or service by vendors or consultants in th normal course of business if suc goods or services would not be expec ed to be provided directly by the reci ient itself, such as auditing or busine machine purchase and/or mainte nance. A single entity could be a s brecipient with respect to some acti ties it conducts for a recipient whil not being a subrecipient with respec to other activities it conducts for a r cipient.

(2) "Subgrant" shall mean an transfer of Corporation funds from recipient which qualifies the organiza tion receiving such funds as a subrec pient under the definition set forth i paragraph (b)(1) of this section.

(c) "Fees and dues" as used in this part shall mean fees or dues paid to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein; it shall also include fees and dues required by a professional licensing body. The term "fees and dues" shall not include one-time fees or expenses for programs or individuals to participate in routine training and education activities.

§ 1627.3 Requirements for all subgrants.

(a)(1) All subgrants must be submitted in writing to the Corporation for prior, written approval. The submission shall include the terms and conditions of the subgrant and the amount of funds intended to be transferred.

(2) The Corporation shall have 45 days to approve, disapprove, or suggest modifications to the subgrant. A subgrant which is disapproved or to which modifications are suggested may be resubmitted for approval. Should the Corporation fail to take action within 45 days, the recipient shall notify the Corporation of this failure and, unless the Corporation responds within 7 days of the receipt of such notification, the subgrant shall be deemed to have been approved.

(3) Any subgrant not approved according to the procedures of paragraph (a)(2) of this section shall be subject to audit disallowance and recovery of all the funds expended pursuant thereto.

(4) Any subgrant which is a continuation of a previous subgrant and which expires before March 1, 1984 may be extended until March 1, 1984, if a new subgrant agreement is submitted for approval to the Corporation by January 15, 1984. In the event the Corporation refuses to allow the renewal of any such submitted agreement, the recipient shall be permitted to allow the subrecipient 60 days' funding to close out the subgrant activities.

(b)(1) A subgrant may not be for a period longer than one year, and all funds remaining at the end of the grant period shall be considered part of the recipient's fund balance.

(2) All subgrants shall contain a provision providing for their orderly termination in the event that the recipient's funding is terminated or the recipient is not refunded and for suspension of activities if the recipient's funding is suspended.

(3) A substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10% shall require Corporation approval pursuant to the provisions of section 1627.3(a). Minor changes of work program or changes in funding of less than 10% shall not require prior Corporation approval, but the Corporation shall be informed in writing thereof.

(c) Recipients shall be responsible for ensuring that subrecipients comply with the financial and audit provisions of the Corporation. The recipient is responsible for ensuring the proper expenditure, accounting for, and audit of delegated funds. Any funds delegated by a recipient to a subrecipient shall be subject to the audit and financial requirements of the Audit and Accounting Guide for Recipients and Auditors. The delegated funds may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient; or such funds may be included in a separate audit report of the subrecipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting in accordance with generally accepted accounting principles. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances where a large organization receives a small subgrant. If such an alternate means is approved by the Audit Division of the Corporation, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

(d) The recipient shall be responsible for repaying the Corporation for any disallowed expenditures by a subrecipient, irrespective of whether the recipient is able to recover such expenditures from the subrecipient.

(e) To assure subrecipient compliance with the Act, Congressional restrictions having the force of law, Corporation Regulations (45 CFR Chapter XVI), and Corporation Guidelines or Instructions, contracts between a recipient and a subrecipient shall provide for the same oversight rights for the Corporation with respect to subrecipients as apply to recipients.

[48 FR 54209, Nov. 30, 1983; 49 FR 1703, Jan. 13, 1984]

§ 1627.4 Fees and dues.

(a) Corporation funds may be used for fees or dues to an organization, whether on behalf of a recipient or an individual, without prior written approval by the Corporation, only for the following purposes:

(1) Fees or dues paid to an organization in order to qualify for professional liability insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment;

(2) Mandatory or voluntary fees or dues to a bar association, Supreme Court or professional licensing body;

(3) Fees or dues paid to a health insurance provider or to an organization in order to qualify for health insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment; and

(4) Fees or dues to other organizations provided such are directly related to the delivery of legal services to eligible clients, the practice of law, or the management of a law office.

(b) In order to prevent a significant diversion of funds from the direct provision of legal services to eligible clients, the Corporation has determined that the total of any one recipient's annual expenditure on fees and dues should be strictly limited. With the exception of categories paragraphs (a) (1) and (3) listed in § 1627.4(a), that total shall not exceed one-half of one per cent of the recipient's annualized funding level except that each recipient may expend up to $1,500 and no recipient may expend more than $20,000 on fees and dues.

(c) In determining whether to use funds for fees or dues, recipients shall give preference to such uses as (1) payment of bar association dues and similar dues for paralegal and legal service or law office administrator organizations; and (2) the provision of special training related to activities designed to enhance the skill of program staff in provision of legal services to clients. Training relating to skills the use of which is often not permissible if supported with Corporation funds (e.g. lobbying) shall not be approved.

(d) Corporation policy forbids payment of fees or dues if the effect of that payment would be to allow recipients to use Corporation funds indirectly in areas (such as lobbying, political activities, voter registration) for which direct expenditures by recipients are prohibited or severely restricted under the Act, other applicable Federal law, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions. Consequently, recipients shall not make payment of fees or dues to organizations whose activities would violate the Act, or Corporation Regulations, Guidelines or Instructions.

§ 1627.5 Contributions.

Any contributions or gifts of Corporation funds to another organization or to an individual are prohibited.

§ 1627.6 Transfers to other recipients.

(a) The requirements of § 1627.3 shall apply to all subgrants by one recipient to another recipient.

(b) The subrecipient shall audit any funds subgranted to it in its annual audit and supply a copy of this audit to the recipient. The recipient shall either submit the relevant part of this audit with its next annual audit or, if an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of § 1627.3(d), the Corporation may hold the subrecipient directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either recipient or subrecipient or may divide the recovery between the two; the Corporation's total recovery may not exceed the amount of expenditures disallowed.

(d) Funds received by a recipient from other recipients in the form of fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as Corporation funds.

§ 1627.7 Training and education activities.

(a) Corporation funds utilized to pay for participation of programs and individuals in routine training and educational activities do not count toward computation of the maximum allowable total of fees and dues under § 1627.4(b).

(b) No recipient shall expend Corporation funds for training or educational activities or utilize Corporation funds to pay for programs or individuals to participate in outside training or educational activities if the effect of such payment would be to allow the use of these program funds:

(1) For purposes for which direct expenditures are prohibited under the Act, other applicable Federal law, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions; or

(2) For training or educational activities in areas in which program involvement is prohibited (such as political activities or voter registration, etc.) or in areas wherein only limited and incidental activities are allowed (such as lobbying).

§ 1627.8 Tax sheltered annuities, retirement accounts and pensions.

No provision contained in this part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax sheltered annuity, retirement account, or pension fund.

PART 1628—RECIPIENT FUND BALANCES

Sec.
1628.1 Purpose.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedure.
1628.5 Fund balance deficits.

Authority: Secs. 1006(b)(1)(A), 1007(a)(3); 42 U.S.C. 2996e(b)(1)(A), 42 U.S.C. 2996f(a)(3).

Source: 49 FR 21332, May 21, 1984, unless otherwise noted.

§ 1628.1 Purpose.

(a) This part is designed to ensure the timely allocation of Legal Services Corporation (LSC) funds for the effective and economical provision of high quality legal assistance to eligible clients. To that end, recipients will be permitted to maintain and re-program from year to year fund balances of no more than 10% of their annualized LSC support.

(b) A waiver of this policy up to a maximum of 25% of the recipient's annualized grant amount may be obtained under certain conditions as described in § 1628.3(d). Funds carried over in excess of 10% or above the level permitted by a specific waiver will be recovered as set forth in section 1628.3(a).

§ 1628.2 Definitions.

(a) LSC "support" for the reporting period shall be defined as the sum of:

(1) The annualized LSC grant award(s);

(2) Any additional income derived from an LSC grant (interest, rents, etc.); and

(3) That proportion of any reimbursement or recovery of direct payment to attorneys, proceeds from the sale of assets, or other compensation or income attributable to any Corporation grant.

(b) The LSC "fund balance amount" shall be determined solely by reference to the recipient's annual audit. (The fund balance reported in the recipient's annual audit is subject to review and approval by the Corporation's Audit Division. Noncompliance with provisions of the Corporation's *Audit and Accounting Guide for Recipients and Auditors* may result in an increase or decrease in the fund balance as reported in the audit.)

(c) The "fund balance percentage" shall be determined by expressing the fund balance amount as a percentage of the recipient's LSC support for the reporting period.

(d) "Recipient" as used in this part, means any recipient as defined in section 1002(6) of the LSC Act and any grantee or contractor receiving funds from the Corporation under section 1006(a)(1) or 1006(a)(3) of the Act.

§ 1628.3 Policy.

(a) In the absence of a waiver from the Director, Office of Field Services, any fund balance amount in excess of 10% of LSC support shall be repaid to the Corporation in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Office of Field Services shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(b) After the Corporation's receipt and review of the recipient's annual audit, the Corporation shall provide written notice to the recipient of the fund balance amount due and payable to the Corporation as well as the method for repayment 30 days prior to the effective date for repayment either to occur or to commence in accordance with § 1628.3(a).

(c) In no way shall any such reduction and/or deduction in LSC support be construed to affect permanently the annualized funding level of the recipient, nor shall any such reduction and/or deduction in LSC support be considered to be a termination or denial of refunding under 45 CFR 1606 and 1625 respectively.

(d) A waiver of the 10% ceiling may be granted at the discretion of the Corporation in extraordinary circumstances; such a waiver may be granted by the Corporation to extend the ceiling for fund balance amounts established under this regulation to a maximum of 25% of LSC support. Further, in addition to the established 10% ceiling, the Corporation shall grant a waiver up to 25% of direct payment to attorneys in the last audit to recipients who operate compensated private bar programs or components to be utilized exclusively to fund a cash reserve or encumbrance system for direct payment to attorneys. Such recipients must submit a timely written request to the Office of Field Services to obtain this waiver. However, under no circumstances will a recipient be allowed to retain a fund balance in excess of 25% of support.

(e) All one-time or special purpose grants awarded by the Corporation shall have an effective date and termination date. Such grants are not subject to this fund balance policy. Revenue and expenses relating to such grants must be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the termination date of the grant without the prior written approval of the Corporation. All unexpended funds under such grants shall be returned to the Corporation.

§ 1628.4 Procedure.

(a) Any recipient whose audited fund balance exceeds the ceiling set forth in § 1628.1 shall submit to the Director, Office of Field Services, within 120 days after the close of the recipient's fiscal year, a statement of the fund balance which occurred according to the annual audit required by section 1009(c)(1) of the Legal Services Corporation Act, as amended. The funds will be recovered as set forth in § 1628.3, unless excluded by a specific waiver.

(b) The recipient may, within 120 days after the close of its fiscal year, apply to the Director, Office of Field Services for a waiver of the 10% ceiling. Such application must specify:

(1) The fund balance amount according to the recipient's annual audit;

(2) The reason such fund balance has been attained;

(3) The recipient's plan for the disposition or reserve of such fund balance amount within the current grant period;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's then current fiscal year; and,

(5) The extraordinary circumstances justifying the retention of the fund balance which include windfall receipts for which a recipient cannot reasonably plan, such as proceeds from the sale of property, receipt of direct payment to attorneys, and collection of insurance proceeds.

(c) Excess fund balance amounts shall not be expended by the recipient prior to approval of the waiver application by the Corporation.

(d) The decision of the Corporation regarding the granting of a waiver (other than the automatically granted waiver for a cash reserve for compensated bar programs) shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. In addition, the Corporation shall give special consideration to the following factors in reviewing a waiver request submitted pursuant to this regulation:

(1) Emergencies, unusual occurrences, or other extraordinary circumstances giving rise to the existence of a fund balance in excess of 10%, and the special needs of clients;

(2) The need for a recipient which operates a compensated bar program or component to maintain a cash reserve; and

(3) The recipient's financial management record.

(e) Excess fund balance amounts approved for expenditure must be separately reported in the current fiscal year audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

[49 FR 23056, June 4, 1984]

§ 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those established in LSC's "Fundamental Criteria of an Accounting and Financial Reporting System," should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period(s) requires the prior written approval of the Corporation.

(b) The recipient may, within 120 days of the close of its fiscal year, apply to the Corporation for approval of the costs associated with the liquidation of the deficit balances in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in sections 1628.4(b) (1), (2), (3), and (4). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other extraordinary circumstances giving rise to this situation.

PART 1629—BONDING OF RECIPIENTS

Sec.

1629.1 General.
1629.2 Persons required to be bonded.
1629.3 Criteria for determining handling.
1629.4 Meaning of fraud or dishonesty.
1629.5 Form of bonds.
1629.6 Effective date.

AUTHORITY: Secs. 1006(b)(1)(A) and 1007(a)(3), Pub. L. 93-355, as amended, Pub. L. 95-222 (42 U.S.C. 2996e(1)(A) and 2996f(3)).

SOURCE: 49 FR 28717, July 16, 1984, unless otherwise noted.

§ 1629.1 General.

(a) If any program which receives Corporation funds is not a government, or an agency or instrumentality thereof, such program shall carry fidelity bond coverage at a minimum level of at least ten (10) percent of the program's annualized LSC funding level for the previous fiscal year, or of the initial grant or contract, if the program is a new grantee or contractor. No coverage carried pursuant to this part shall be at a level less than $50,000.

(b) A fidelity bond is a bond indemnifying such program against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers, agents, directors or other persons holding a position of trust with the program.

§ 1629.2 Persons required to be bonded.

(a) Every director, officer, employee and agent of a program who handles funds or property of the program shall be bonded as provided in this part.

(b) Such bond shall provide protection to the program against loss by reason of acts of fraud or dishonesty on the part of such director, officer, employee or agent directly or through connivance with others.

§ 1629.3 Criteria for determining handling.

(a) The term "handles" shall be deemed to encompass any relationship of a director, officer, employee or agent with respect to funds or other property which can give rise to a risk of loss through fraud or dishonesty. This shall include relationships such as those which involve access to funds or other property or decision-making powers with respect to funds or property which can give rise to such risk of loss.

(b) Subject to the application of the basic standard of risk of loss to each situation, the criteria for determining whether there is "handling" so as to require bonding are:

(1) Physical contact with cash, checks or similar property;

(2) The power to secure physical possession of cash, checks or similar property such as through access to a safe deposit box or similar depository, access to cash or negotiable instruments and assets, power of custody or safe-keeping, or the power to borrow or withdraw funds from a bank or other account whether or not physical contact actually takes place;

(3) The power to transfer or cause to be transferred property such as mortgages, title to land and buildings, or securities, through actual or apparent authority, to oneself or to a third party, or to be negotiated for value.

(c) Persons who actually disburse funds or other property, such as officers authorized to sign checks or other negotiable instruments, or persons who make cash disbursements, shall be considered to be "handling" such funds or property.

(d) In connection with disbursements, any persons with the power to sign or endorse checks or similar instruments or otherwise render them transferable, whether individually or as cosigners with one or more persons, shall each be considered to be "handling" such funds or other property.

(e) To the extent a person's supervisory or decision-making responsibility involves factors in relationship to funds discussed in paragraphs (b) (1), (2), (3), or paragraphs (c) and (d) of this section, such persons shall be considered to be "handling" in the same manner as any person to whom the criteria of those subparagraphs apply.

§ 1629.4 Meaning of fraud or dishonesty.

The term "fraud or dishonesty" shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in the handling of funds as delineated in § 1629.3. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdemeanor, provided that within the law of the state in which the act is committed, a court could afford recovery under a bond providing protection against fraud or dishonesty. As applied under state laws, the term "fraud or dishonesty" encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or any other fraudulent or dishonest acts.

§ 1629.5 Form of bonds.

Any form of bond which may be described as individual, schedule or blanket, or any combination of such forms of bonds, shall be acceptable to meet the requirements of this part. The basic types of bonds in general usage are:

(a) An individual bond which covers a named individual in a stated penalty.

(b) A name schedule bond which covers a number of named individuals in the respective amounts set opposite their names;

(c) A position schedule bond which covers all of the occupants of positions listed in the schedule in the respective amounts set opposite such positions;

(d) A blanket bond which covers all the insured's directors, officers, employees and agents with no schedule or list of those covered being necessary and with all new directors, officers, employees and agents bonded automatically, in a blanket penalty.

§ 1629.6 Effective date.

(a) Each program shall certify in its Application for Refunding, beginning with the application for FY 1985 funds, that it has obtained a bond or bonds which satisfy the requirements of this part.

(b) A copy of such bond or bonds shall be provided to the Corporation at its request.

PART 1630—COSTS STANDARDS AND PROCEDURES

Sec.

1630.1 Purpose.
1630.2 Definitions.
1630.3 Burden of proof.
1630.4 Standards governing allowability of costs under Corporation grants or contracts.
1630.5 Costs specifically unallowable under Corporation grants and contracts.
1630.6 Effect of absence of prior approval.
1630.7 Review and appeal process.
1630.8 Recovery of disallowed costs.
1630.9 Other remedies; effect on other parts.
1630.10 Responsibility of subgrantees and subcontractors.
1630.11 Time.
1630.12 Non-public funds.

AUTHORITY: 42 U.S.C. 2996e, 2996f, 2996g, 2996h(c)(1), and 2996i(c).

SOURCE: 51 FR 29081, Aug. 13, 1986, unless otherwise noted.

§ 1630.1 Purpose.

This part is intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs incurred by recipients of the Corporation. The Corporation has considered the standardized policies developed over years of federal experience with assistance to nonprofit organizations, and has adopted, or adapted, many of these policies where appropriate for the funding of legal services for eligible clients.

§ 1630.2 Definitions.

(a) A "questioned cost" is a charge or proposed charge to a recipient's Corporation funds which could be determined to be ineligible.

(b) An "allowed cost" is a cost that, after investigation, the Corporation has determined to be eligible for payment from a recipient's Corporation funds.

(c) A "disallowed cost" is a cost which has been determined to be ineligible for payment from a recipient's Corporation funds and includes any income the recipient may have derived from activities supported by that cost, including proceeds from the sale of assets and interest.

(d) "Recipient" as used in this part means any grantee or contractor receiving funds from the Corporation under sections 1006(a)(1) or 1006(a)(3) of the Act.

§ 1630.3 Burden of proof.

(a) The recipient shall at all times have the burden of proof under this Part.

(b) If a recipient defends a questioned cost on the basis that the funds used were not subject to the restriction cited by the Corporation, the recipient has the burden of proving that the funds actually expended were not in fact subject to that restriction.

§ 1630.4 Standards governing allowability of costs under Corporation grants or contracts.

(a) *General criteria.* Expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was:

(1) Actually incurred during the effective term of the grant or contract (unless allowed by Part 1628) and the recipient was liable for payment;

(2) Reasonable and necessary for the provision of legal services for eligible clients or for the accomplishment of another function specified in the

grant or contract application as approved by the Corporation;

(3) Allocable to such function(s);

(4) In compliance with the Act, applicable appropriation acts, Corporation rules, regulations, guidelines, and instructions, the Corporation Audit and Accounting Guide for Recipients and Auditors, and the terms and conditions of the grant or contract;

(5) Consistent with policies and procedures that apply uniformly to both Corporation-financed and other activities of the recipient;

(6) Accorded consistent treatment;

(7) Determined in accordance with generally accepted accounting principles;

(8) Not included as a cost or used to meet cost sharing or matching requirements of any other federally financed program, unless the agency whose funds are being matched determines in writing that Corporation funds may be used for federal matching purposes; and

(9) Adequately and contemporaneously documented and the Corporation was given access during normal business hours to the documentation as filed in the recipient's normal business records.

(b) *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. If a cost is disallowed solely on the ground that it is excessive, only the amount that is larger than reasonable shall be disallowed. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with recipients, or separate divisions thereof, which receive the preponderance of their support from grants or contracts with the Corporation or federal agencies, rather than through the sale of goods and services in free markets. In determining the reasonableness of a given cost, consideration shall be given to:

(1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract;

(2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, federal and state laws and regulations, and the terms and conditions of the grant or contract;

(3) Whether the individuals concerned acted with prudence under the circumstances, considering their responsibilities to the recipient, its clients and employees, the public at large, the Corporation, and the federal government; and

(4) Significant deviations from the established practices of the recipient which may unjustifiably increase the grant or contract costs.

(c) *Allocable costs.* (1) A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Corporation grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(i) Is incurred specifically for the grant or contract,

(ii) Benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or

(iii) Is necessary to the overall operation of the recipient, although a direct relationship to any particular cost objective cannot be shown.

(2) Any cost allocable to a particular grant or contract or other cost objective under these principles may not be shifted to other Corporation grants or contracts to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms or conditions of the grant or contract.

(d) *Applicable credits.* (1) A recipient must deduct all applicable credits, as defined in paragraph (d)(2) of this section, from the costs it charges to a grant or contract from the Corporation.

(2) The term "applicable credits" refers to those receipts or reductions of expenditures which operate to offset or reduce expense items that are allocable to grants or contracts as direct or indirect costs. Typical examples of such transactions are purchase discounts, rebates or allowances, recov-

eries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the recipient relate to allowable costs they shall be credited to the grant or contract either as a cost reduction or cash refund, as appropriate.

(e) *Program income.* Program income represents gross income earned by the recipient from Corporation-supported activities, and includes, but is not limited to, income from service fees (including attorneys' fees and costs), sales of commodities and property, and interest earned on grant or contract advances or other funds.

(f) *Advance understandings.* (1) Under any given grant or contract the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with recipients that receive a preponderance of their support from the Corporation. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the Office of Monitoring, Audit, and Compliance in advance of incurring special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element. Acceptance of the annual budget as part of the renewal of funding does not constitute an "advance understanding" or "approval", unless the cost or expenditure is identified and specifications of the purpose, amount, and all other information necessary to evaluate the necessity and reasonableness of the cost are included and explicit approval of the specific transaction is included with approval of the grant application.

(2) Because there is significant potential for disagreement regarding the reasonableness, necessity, or allowability of costs allocable to the following activities, recipients are encouraged to seek advance understandings regarding—

(i) Conduct of or attendance at meetings (attended primarily by employees of other LSC recipients or a purpose of which is to encourage political activity), conferences, symposia, or training projects by participants, trainees, trainers, or employees;

(ii) Maintenance or occupancy of a branch office if a primary use of that office is to support legislative advocacy, formal rulemaking, or lobbying.

(g) *Guidance.* The Circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations acts, this part, the Audit and Accounting Guide for Recipients and Auditors, and Corporation rules, regulations, guidelines, and instructions.

§ 1630.5 Costs specifically unallowable under Corporation grants and contracts.

(a) No cost allocable to an activity that violates the Act, other provisions of law, Corporation rules, regulations, guidelines, instructions, or the terms of a recipient's grant or contract agreement may be charged to Corporation funds.

(b) Without prior approval of the Corporation (which approval shall not be withheld unless the Corporation determines that the cost would be inconsistent with the standards and policies of this part and which shall be valid for no more than one year), no cost allocable to any of the following may be charged to Corporation funds:

(1) The cost of a lease or purchase of equipment, furniture, books or similar personal property if the single item or combined purchase price is in excess of $10,000. In the case of a lease, the purchase price is determined by the prevailing market rate for purchase of the property leased, not by the lease price. "Combined purchase price" means the total cost of all the components of a system, such as a computer or telephone system, in which the components are planned as integral parts of the system or lease process. The addition of books to an existing library purchased during a prior audit year, of new printers to an existing computer system purchased during a prior audit year, or of new furniture to office furniture purchased during a

prior audit year would not require prior approval unless the additions had a combined purchase price in excess of $10,000. When purchases or leases are made for more than one office, the "combined purchase price" includes the cost of all new system components for all offices affected;

(2) Purchases of real property;

(3) Consultant contracts in excess of $5,000 or consultant fees in excess of $261 per eight-hour day or $35 per hour except that

(i) The retention of expert witnesses or other consultants or attorneys secured on behalf of eligible clients shall not be considered consultant services, and

(ii) Audit services shall not be considered as consultant services, but other services that may be provided by a recipient's auditor, such as the preparation of interim financial reports or tax reports, shall be considered consultant services and shall require approval if the fees exceed the limits established by this subparagraph.

§ 1630.6 Effect of absence of prior approval.

The Corporation may not assert the absence of its approval as a basis for disallowance of a cost if it has not provided written notice to a recipient that it objects to a proposed cost expenditure involving Corporation funds, or to a proposed action that could result in a cost expenditure that the recipient will charge to Corporation funds, within sixty (60) days of receipt by the Office of Monitoring, Audit, and Compliance of a request for such approval, or within thirty (30) days of the receipt by that Office of all requested information about the proposal. The Corporation must make written request for additional information within forty five (45) days of the receipt by the Office of Monitoring, Audit, and Compliance of the request for approval. This section does not apply to requests for approval made prior to the effective date of this regulation. If the request for prior approval is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial.

§ 1630.7 Review and appeal process.

(a) When it questions a cost incurred by a recipient, the Corporation shall give written notice to the recipient and the Chairperson of its governing body stating the dollar amount of the cost and the factual and legal basis for questioning it. Such notice must be provided no more than six (6) years after the recipient incurred the cost or expended the funds.

(b) The recipient may respond with written evidence and argument to show that the cost was allowable, that the Corporation, for equitable, practical, or other reasons, should not recover all, or part of the amount, or that the recovery should be made in installments. If the recipient fails to respond within thirty (30) days of its receipt of notice, the cost shall be disallowed.

(c) Within forty-five (45) days of receiving the recipient's written response to the notice of questioned cost, the Corporation shall issue a determination that the cost has been allowed or disallowed and advise the recipient of the method and schedule for collection of any disallowed costs.

(d) Within thirty (30) days after it receives a determination from the Corporation that a questioned cost has been disallowed, a recipient may send a written request for review to the President of the Corporation, stating its reasons in detail.

(e) Within thirty (30) days after receipt of the written request for review, the President shall either adopt, modify, or reverse the determination. The decision shall be based on the written record, consisting of the notice, the recipient's response, the Corporation's determination, the recipient's request for review, and any response and analysis sent to the President by Corporate staff. The decision of the President, or his or her designee, shall become final upon receipt by the recipient of written notice of the decision. The Corporation shall send a copy of the staff's response and analysis to the recipient at the time it sends the President's decision.

(f) If the President has had prior involvement in the consideration of the issue, another executive employee who has had no prior involvement shall be designated to hear and decide the request for review.

§ 1630.8 Recovery of disallowed costs.

After completion of all action under § 1630.7, the Corporation shall recover, in the form of a reduction in future grant checks or direct payment or otherwise, an amount not to exceed the total disallowed cost and any additional income derived from activities supported or assets purchased by means of the disallowed cost.

§ 1630.9 Other remedies; effect on other parts.

(a) In all cases in which a cost has been disallowed by the Corporation, the Corporation shall require that the recipient take the action needed to prevent recurrence of the activity that gave rise to such disallowed cost. In cases of serious financial mismanagement, fraud, or defalcation of funds, the Corporation may take appropriate action pursuant to Parts 1606, 1623, and 1625 of its regulations and shall make such referrals and recommendations as the circumstances warrant.

(b) Recovery of questioned costs by any means under this part is not to be construed to affect permanently the annualized funding level of the recipient, or to constitute a termination of financial assistance under Part 1606, a suspension of funding under Part 1623, or a denial of refunding under Part 1625.

§ 1630.10 Responsibility of subgrantees and subcontractors.

When disallowed costs arise from expenditures incurred under a subgrant or subcontract of Corporation funds, the recipient and the subrecipient or subcontractor will be held jointly and severally responsible for the actions of the subrecipient or subcontractor, as provided in 45 CFR Part 1627, and will be subject to all remedies available under this Part.

§ 1630.11 Time.

(a) *Computation.* Time limits specified in this Part shall be computed in accordance with Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure.

(b) *Enlargement.* The President of the Corporation may, on written request for good cause shown, grant an enlargement of time and shall so notify the recipient in writing.

§ 1630.12 Non-public funds.

(a) No cost allocable to an activity that violates section 1010(c) of the Act or Part 1610 of these regulations may be charged to non-public funds.

(b) The Corporation shall, pursuant to this part, collect from the recipient's Corporation funds an amount not to exceed the amount of non-public funds allocated to such violation and any additional income derived therefrom.

PART 1631—EXPENDITURE OF GRANT FUNDS

Sec.
1631.1 Policy.
1631.2 Application and waiver.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996f(a)(3); Pub. L. 99-190, 99 Stat. 1185; Pub. L. 99-180, 99 Stat. 1136.

Source: 51 FR 24827, July 9, 1986, unless otherwise noted.

§ 1631.1 Policy.

No Legal Services Corporation funds, including income derived therefrom and those LSC funds held by organizations which control, are controlled by, or are subject to common control with, a recipient or subrecipient, a group of recipients and/or subrecipients, or agents or employees of such organizations shall be expended, unless such funds are expended in accordance with all of the restrictions and provisions of Pub. L. 99-180 of December 13, 1985, except that such funds may be expended for the continued representation of aliens prohibited by said Public Law where such representation commenced prior to January 1, 1983, or as approved by the Corporation.

§ 1631.2 Application and waiver.

(a) The Corporation may grant a waiver of the restrictions contained in this part to enable a program to complete representation in cases which commenced prior to January 1, 1986.

(b) Programs seeking a waiver pursuant to paragraph (a) of this section

must submit documentation to the Corporation detailing their efforts to dispose of such cases in accordance with the procedures required in § 1626.6(a) (1), (2) and (3), and rec
Corporation approval to expend fu
for completion of the affected case

CHAPTER XVII—NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

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PART 1700—ORGANIZATION AND FUNCTIONS

Sec.

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AUTHORITY: 5 U.S.C. 552, 20 U.S.C. 1501 et seq.

SOURCE: 39 FR 39879, Nov. 12, 1974, unless otherwise noted.

§ 1700.1 Creation.

The National Commission on Libraries and Information Science was created on July 20, 1970, by the National Commission on Libraries and Information Science Act (20 U.S.C. 1051 et seq.) as an independent agency within the executive branch.

§ 1700.2 The Commission.

The Commission is composed of fifteen members, fourteen of whom are appointed by the President, subject to confirmation by the Senate and one of whom is the Librarian of Congress. One of the members of the Commission is designated by the President as Chairman.

§ 1700.3 Responsibilities.

The Commission is responsible for the development of overall plans to provide library and information services adequate to meet the needs of the people of the United States and to utilize most effectively the nation's educational resources in assuring optimum provision of such services.

§ 1700.4 Functions, authority and duties.

(a) *Functions.* To fulfill its responsibilities, the Commission is empowered to perform the following functions:

(1) To advise the President, Congress and other Federal, state and local governmental agencies, as well as private organizations regarding library and information services.

(2) To conduct studies, surveys and analyses of the library and informational needs of the nation, including the special needs of rural areas, economically, socially or culturally deprived persons and the elderly, and the means by which these needs be met through the establishmen improvement of information cen libraries in educational instituti and through public, research, sp and other types of libraries.

(3) To evaluate current library information resources and services current library and information ence programs.

(4) To develop overall plans meeting national library and infor tion needs and for coordinating ac ties at the Federal, state and l levels.

(5) To extend and improve the tion's library and information-h dling capabilities by the promotio research and development.

(b) *Authority.* In carrying out functions, the Commission is aut ized:

(1) To contract with public and vate agencies.

(2) To publish and disseminate ports, findings, studies and records cluding, but not limited to, report consultants, transcripts of testim summary reports, and reports of ot Commission findings, studies, and ommendations.

(3) To conduct hearings.

(c) *Duties.* The Commission is o gated to submit to the President the Congress (not later than Janu 31 of each year) a report on its act ties during the preceding fiscal year

§ 1700.5 Executive Director.

The Executive Director is direc responsible to the Commission, wo under the supervision of the Ch man, and assists him in carrying the Commission's organizational administrative responsibilities. principal role is to see that other s units work together and promptly pose of matters for which they are sponsible. He is directly responsi for internal administrative matt such as personnel and budget pl ning.

§ 1700.6 Office of the Commission.

The Office of the Commission is cated at 1717 K Street NW., Suite Washington, DC 20036.

PART 1701—DISCLOSURE OF INFORMATION

Sec.
1701.1 Statement of policy.
1701.2 Disclosure of records and informational materials.
1701.3 Requests.
1701.4 Fees.
1701.5 Prompt response.
1701.6 Form of denial.
1701.7 Appeals.

AUTHORITY: 5 U.S.C. 552, 20 U.S.C. 1501 et seq.

§ 1701.1 Statement of policy.

The records of the National Commission on Libraries and Information Science shall be available to the fullest extent possible consistent with the terms and policies of 5 U.S.C. section 552 and on request will be promptly furnished to any member of the public.

[39 FR 39879, Nov. 4, 1974]

§ 1701.2 Disclosure of records and informational materials.

(a) With the exception of records and materials exempt from disclosure pursuant to paragraph (b) of this section, any person in accordance with the procedure provided in § 1701.3 may inspect and copy any document of the National Commission on Libraries and Information Science.

(b) The provisions of 5 U.S.C. section 552 which require that agencies make their records available for public inspection and copying do not apply to Commission records which are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and information which is privileged or which relates to the business, personal or financial affairs of any person and which is furnished in confidence;

(5) Inter-agency and intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission;

(6) Personnel, medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would: (i) Interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated by the Commission since its creation on July 20, 1970, and required by section 552(a)(2) of Title 5 to be made available or published. However, in accordance with 5 U.S.C. 552(a)(4)(A) the Commission deems that publication of the index or supplements thereto would be unnecessary and impracticable. Accordingly, it shall provide copies of such index on request but shall not publish and distribute it quarterly or more frequently.

[39 FR 39879, Nov. 12, 1974, as amended at 40 FR 7652, Feb. 21, 1975]

§ 1701.3 Requests.

(a) A member of the public may request records from the National Commission on Libraries and Information Science by writing to the Associate Director, National Commission on Libraries and Information Science, Suite 601, 1717 K Street, NW, Washington, DC 20036.

(b) A request for access to records should reasonably describe the records requested such that Commission personnel will be able to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester.

(c) Records or materials will be available for inspection and copying at the offices of the Commission during the normal business hours of regular business days or they may be obtained by mail.

[39 FR 39879, Nov. 12, 1974, as amended at 40 FR 7652, Feb. 21, 1975]

§ 1701.4 Fees.

(a) A fee may be charged for direct costs of document search and duplication at the rate of $0.10 per page for copying and $5.00 per hour for time expended in identifying and locating records.

(b) A fee may be waived in whole or in part where it is determined that it is in the public interest because furnishing the information can be considered as primarily benefiting the general public or where other circumstances indicate that a waiver is appropriate.

(c) The Commission may limit the number of copies of any document provided to any person.

[40 FR 7653, Feb. 21, 1975]

§ 1701.5 Prompt response.

(a) Within ten days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request, the Associate Director shall determine whether to comply with or deny such request and shall dispatch such determination to the requester, unless an extension is made under paragraph (c) of this section.

(b) Only the Associate Director n
deny a request and is the "person
sponsible for the denial" within
meaning of 5 U.S.C. 552(a). Whe
denial is made at the behest of
other agency, the person in t
agency responsible for urging
denial may also be a "person respo
ble for the denial" if he is so advi
before the Associate Director infor
the requester that his request
denied.

(c) In unusual circumstances as sp
ified in this paragraph, the Associ
Director may extend the time for
initial determination of a request
to a total of ten days (excluding Sat
days, Sundays and legal public h
days). Extensions shall be made
written notice to the requester sett
forth the reason for the extension a
the date upon which a determinat
is expected to be dispatched. As u
in this paragraph "unusual circu
stances" means, but only to the ext
necessary to the proper processing
the request—

(1) The need to search for and c
lect the requested records from fi
facilities or other establishments t
are separate from the Commission;

(2) The need to search for, colle
and appropriately examine a volu
nous amount of separate and disti
records which are demanded in
single request; or

(3) The need for consultation, wh
shall be conducted with all practica
speed, with another agency hav
substantial interest in the determi
tion of the request.

(d) If no determination has been c
patched at the end of the ten-d
period, or the last extension there
the requester may deem his requ
denied, and exercise a right of app
in accordance with § 1701.7. When
determination can be dispatch
within the applicable time limit, t
Associate Director shall neverthel
continue to process the request.
expiration of the time limit he sh
inform the requester of the reason
the delay, of the date on which a
termination may be expected to be c
patched, and of his rights to treat t
delay as a denial and appeal to the
ecutive Director in accordance w
§ 1701.7. He may also ask the reque

er to forgo appeal until a determination is made.

[40 FR 7653, Feb. 21, 1975]

§ 1701.6 Form of denial.

A reply denying a request shall be in writing, signed by the Associate Director, and shall include: (a) A specific reference to the exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, (b) brief explanation of how the exemption(s) applies to the record(s) withheld, (c) a statement that the denial may be appealed under § 1701.7 within thirty days by writing to the Executive Director, National Commission on Libraries and Information Science, Suite 601, 1717 K Street NW., Washington, DC 20036, and (d) that judicial review will thereafter be available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or in the District of Columbia.

[40 FR 7653, Feb. 21, 1975]

§ 1701.7 Appeals.

(a) When the Associate Director has denied a request for records in whole or in part, the requester may, within thirty days of receipt of the letter notifying him of the denial, appeal to the Commission. Appeals to the Commission shall be in writing, addressed to the Executive Director, National Commission on Libraries and Information Science, 1717 K Street NW., Washington, DC 20036.

(b) The Commission will act upon an appeal within twenty days (excepting Saturdays, Sundays or legal public holidays) of its receipt, unless an extension is made under paragraph (c) of this section.

(c) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays, and legal public holidays) minus any extension granted at the initial request level pursuant to § 1701.5(c). Such extension shall be made by written notice to the requester setting forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the appeal—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

(d) If no determination of the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the records are situated, or the District of Columbia. The requester may be asked to forgo judicial review until determination of the appeal.

(e) The Commission's determination on appeal shall be in writing. An affirmance in whole or in part of a denial on appeal shall include: (1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record,

(2) A brief explanation of how the exemption(s) applies to the record(s) withheld, and

(3) A statement that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the dis-

trict in which the agency records are situated, or the District of Columbia.

[40 FR 7653, Feb. 21, 1975]

PART 1703—GOVERNMENT IN THE SUNSHINE ACT

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1703.601 Judicial review.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 42 FR 13553, Mar. 11, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 1703.101 Purpose.

This part sets forth the regulations under which the Commission shall engage in public decision-making processes, make public announcement of meetings at which a quorum of or all Commission members consider and determine official Commission action, and inform the public of which meetings they are entitled to observe.

§ 1703.102 Definitions.

In this part:

(a) "Meeting" means the deliberations of a majority of the Commission members who have been appointed by the President and confirmed by the Senate where such deliberations determine or result in the joint conduct of official Commission business.

(b) "Member" means one of the Commissioners of the National Commission on Libraries and Information Science (NCLIS) who is appointed to that position by the President with the advice and consent of the Senate.

§ 1703.103 Applicability and scope.

This part applies to deliberations of a majority of the Commission members who have been appointed by the President and confirmed by the Senate. Excluded from coverage of this part are deliberations of interagency committees whose composition includes Commission members and deliberations of Commission officials who are not members; individual member's consideration of official agency business circulated to the members in writing for disposition or notation; and deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in § 1703.202.

§ 1703.104 Open meeting policy.

The public is entitled to the fullest practicable information regarding the decision-making processes of the Commission. Commission meetings involving deliberations which determine or result in the joint conduct or disposition of official Commission business are presumptively open to the public. It is the intent of these regulations to open such meetings to public observation while protecting individuals' rights and the Commission's ability to carry out its responsibilities. Meetings or portions of meetings may be closed to public observation only if closure can be justified under one of the provisions set forth in § 1703.202.

Subpart B—Procedures Governing Decisions About Meetings

§ 1703.201 Decision to hold meeting.

When Commission members make a decision to hold a meeting, the proposed meeting will ordinarily be scheduled for a date no earlier than eight days after the decision to allow sufficient time to give appropriate public notice. At the time a decision is made to hold a meeting, the time, place, and subject matter of the meeting will be determined, as well as whether the meeting is to be open or closed to the public.

§ 1703.202 Provisions under which a meeting may be closed.

(a) A meeting or portion thereof may be closed to public observation, and information pertaining to such meeting may be withheld from the public, where the Commission determines that such portion or portions of its meeting or disclosure of such information is likely to:

(1) Disclose matters that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of an agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of this title). Provided that such statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except this subparagraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct,

or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(b) The Commission may exercise its authority to open to public observation a meeting which could be closed under one of the provisions of § 1703.202(a), if it would be in the public interest to do so. The Commission will determine whether the discussion comes within one of the specific exemptions. If the discussion is determined to be exempt, the Commission will consider and determine whether the public interest nevertheless requires that the meeting be open.

§ 1703.203 Decision to close meeting.

(a) Commission members may decide before the meeting to close to public observation a meeting or portion or portions thereof, or to withhold information pertaining to such meeting, only if a majority of the members vote on the record to take such action. No proxy votes on this action shall be allowed. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. If a decision is made to close a portion or portions of a meeting or a series of meetings, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

(b) For every meeting or portion thereof which Commission members have voted to close, the Chairman of NCLIS shall certify that, in his or her opinion, the meeting may properly be closed to the public. In addition, the Chairman shall state each relevant exemptive provision as set forth in § 1703.202(a). A copy of the Chairman's certification, together with a statement from the Chairman setting forth the time and place of the meeting and listing the persons present, shall be retained by the Commission.

(c) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 1703.202 (a) (5), (6), or (7), the Commission members, upon request of any of the Commissioners, shall decide by recorded vote whether to close such portion. If a closure decision is made, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

§ 1703.204 Public availability of recorded vote to close meeting.

Within one day of any vote taken on a proposal to close a meeting, the Commission shall make publicly available a record reflecting the vote of each member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Commission shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

§ 1703.205 Public announcement of meeting.

(a) Except as provided in §§ 1703.207 and 1703.208, the Commission shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting;

(2) Whether the meeting is to be open or closed; and

(3) Name and telephone number of agency official who will respond to requests for information about the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal the information that the meeting was closed to protect, the subject matter shall not be announced.

§ 1703.206 Providing information to the public.

Individuals or organizations interested in obtaining copies of information available in accordance with § 1703.204 may request same under provisions set forth in §§ 1703.402 and 1704.404. Individuals or organizations having a special interest in activities of the Commission may request the Executive Director to the Commissioners to place them on a mailing list for receipt of information available under § 1703.205. The Commission shall provide information to publications whose readers are likely to have a special interest in the work of the Commission.

§ 1703.207 Change in meeting plans after public announcement.

(a) Following public announcement of a meeting, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time.

§ 1703.208 Meetings for extraordinary agency business.

Where agency business so requires, Commission members may decide by majority, recorded vote to schedule a meeting for a date earlier than eight days after the decision. Such a decision would obviate the general requirement for a public announcement at least one week before the scheduled meeting. At the earliest practicable time, however, the Commission will announce publicly the time, place, and subject matter of the meeting, whether the meeting is to be open or closed, and the name and telephone number of an agency official who will respond to requests for information about the meeting.

§ 1703.209 Notice of meeting in Federal Register.

Immediately following each public announcement required by this subpart, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER:

(a) Notice of the time, place, and subject matter of a meeting;

(b) Whether the meeting is open or closed;

(c) Any change in one of the preceding; and

(d) The name and telephone number of an agency official who will respond to requests for information about the meeting.

Subpart C—Conduct of Meetings

§ 1703.301 Meeting place.

Meetings will be held in meeting rooms designated in the public announcement. Whenever the number of observers is greater than can be accommodated in the meeting room designated, every reasonable effort will be made to provide alternative facilities.

§ 1703.302 Role of observers.

The public may attend open meetings for the sole purpose of observation and may not record any of the discussions by means of electronic or other devices or cameras unless approved in advance by the Executive Committee of the Commission. Observers may not participate in meetings unless expressly invited or create distractions to interfere with the conduct and disposition of Commission business. Such participation or attempted participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the Commission. When meetings are partially closed, observers will leave the meeting room promptly upon request so that discussion, of matters exempt under provisions of Subpart B of this part, § 1703.202, may take place expeditiously.

Subpart D—Maintenance of Meeting Records

§ 1703.401 Requirements for maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public must be made and retained for two years or for one year after the conclusion of the Commission proceeding involved in the meeting. The record of any portion of a meeting closed to the public shall be a transcript or electronic recording.

(b) When minutes are produced, such minutes shall fully and clearly describe all matters discussed, and will provide a full and accurate summary of any actions taken and the reasons expressed therefor. The minutes must also reflect the vote of each member on any roll call vote taken during the proceedings and identify all documents produced at the meeting.

(c) The following documents produced under provisions of paragraph (b) of this section shall be retained by the agency as part of the minutes of the meeting:

(1) Certification by the Chairman that the meeting may properly be closed; and

(2) Statement from the presiding officer of the meeting setting forth the date, time and place of the meeting and listing the persons present.

§ 1703.402 Availability of records to the public.

(a) The Commission shall make promptly available to the public the minutes maintained as a record of a closed meeting, except for such information as may be withheld under one of the provisions of § 1703.202(a) of this report. Copies of such minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) The nonexempt part of the minutes shall be in the official custody of the Executive Director of the Commission. Appropriate facilities will be made available to any persons who make a request to review these records.

(c) Requests for copies of nonexempt parts of minutes, shall be directed to the Executive Director of the Commission. Such requests shall identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount.

§ 1703.403 Requests for records under Freedom of Information and Privacy Acts.

Requests to review or obtain copies of records other than the minutes of a meeting will be processed under the Freedom of Information Act (5 U.S.C. 552) or, where applicable, the Privacy Act (5 U.S.C. 552a).

§ 1703.404 Copying and transcription charges.

(a) The Commission will charge fees for furnishing records at the rate of ten cents per page for photocopies and at the actual cost of transcription. When the anticipated charges exceed $50, a deposit of 20 percent of the amount anticipated must be made within 30 days. Requested information will not be released until the deposit is received. Fees shall be paid by check or money order made payable to the National Commission on Libraries and Information Science.

(b) The Executive Director of the Commission has the discretion to waive charges whenever release of the copies is determined to be in the public interest.

Subpart E—Administrative Review

§ 1703.501 Administrative Review.

Any person who believes a Commission action governed by this part to be contrary to the provisions of this part may file an objection in writing with the Executive Director to the Commissioners. Wherever possible, the Executive Director will respond within two working days to objections concerning decisions to close meetings or portions thereof. Responses to objections concerning matters other than closed meetings will be made within ten working days.

Subpart F—Judicial Review

§ 1703.601 Judicial review.

Any person may bring an action in a United States District Court to challenge or enforce the provisions of this part or the manner of their implementation. Such action may be brought prior to or within sixty days after the meeting in question, except that if proper public announcement of the meeting is not made, the action may be instituted at any time within sixty days after such announcement is made. An action may be brought where the Commission meeting was or is to be held or in the District of Columbia.

PART 1705—PRIVACY REGULATIONS

Sec.

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1705.4 Times, places, and requirements for identification of individuals making requests.
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1705.12 Exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 43 FR 47195, Oct. 13, 1978, unless otherwise noted.

§ 1705.1 Purpose and scope.

These procedures provide the means by which individuals may safeguard their privacy by obtaining access to, and requesting amendments or corrections in, information, if any, about these individuals which is contained in the White House Conference Delegate/Alternate Certification File (D/AC File), which is under the control of the National Commission on Libraries and Information Science (hereafter, the Commission).

§ 1705.2 Definitions.

For the purpose of these procedures:

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item or set of items about an individual that is maintained by the Commision in either hard copy or computerized form, including name, residence and other information obtained from the form, "Certification of State/Territorial Delegates/Alternates to the White House Conference on Library and Information Services."

(d) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1705.3 Procedures for requests pertaining to individual records in the D/AC File.

(a) An individual who wishes to know whether the D/AC File contains a record pertaining to him or her shall submit a written request to that effect to the System Manager at the Commission. The System Manager shall, within 10 days of receipt of such submission, inform the individual whether the D/AC File contains such a record.

(b) An individual who desires access to any identified record shall file a request therefor addressed to the System Manager indicating whether such individual intends to appear in person at the Commission's offices or whether he or she desires to receive a copy of any identified record through the mail.

§ 1705.4 Times, places, and requirements for identification of individuals making requests.

(a) An individual who, in accord with § 1705.3(b) indicated that he or she would appear personally shall do so at the Commission's offices, 1717 K Street NW., Suite 601, Washington, D.C., between the hours of 8:30 a.m. and 4 p.m. Monday through Friday (legal holidays excluded) and present either: (1) The response from the System Manager indicating that such a record exists; or

(2) A copy of the executed certification form, as well as another suitable form of identification, such as a valid drivers license or equivalent.

(b) In response to a request for mail delivery, the Commission will mail only to the home address appearing in the D/AC File a copy of the record for that individual within 10 working days.

§ 1705.5 Disclosure of requested information to individuals.

Upon verification of identity, the System Manager shall disclose to the individual: (a) The information contained in the record which pertains to that individual; and (b) the accounting of disclosures of the record, if any, required by 5 U.S.C. 552a(c).

§ 1705.6 Request for correction or amendment to the record.

If a person wishes a change to be made in the record, he or she should follow the procedures for making changes which are included in the instructions accompanying the certification form by which the information was obtained. Copies of these instructions will be mailed to any delegate/alternate upon request.

§ 1705.7 Agency review of request for correction or amendment of the record.

Within 10 days of the receipt of the request to correct or to amend the record, the System Manager will acknowledge in writing such receipt and promptly either: (a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete and inform the individual of same: or

(b) Inform the individual of his or her refusal to correct or amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Commission for the individual to request a review of that refusal.

§ 1705.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the System Manager to correct or to amend his or her record may submit a request for review of such refusal to the Chairman of the Commission, 1717 K Street NW., Suite 601, Washington, DC 20036. The Chairman will, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Chairman extends such 30-day period. If, after his or her review, the Chairman also refuses to correct or to amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Chairman's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1705.9 Disclosure of record to a person other than the individual to whom the record pertains.

An individual to whom a record is to be disclosed in person may have a person of his or her own choosing accompany the individual when the record is disclosed.

§ 1705.10 Fees.

(a) The Commission will not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of the process of disclosing the record to an individual, the Commission will not charge the individual for the cost of making that copy.

(b) If an individual requests the Commission to furnish him or her with a copy of the record (when a copy has not otherwise been made as a necessary part of the process of disclosing the record to the individual) the Commission will charge a fee of $0.25 per page (maximum per page dimension of 8½ by 13 inches) to the extent that the request exceeds $5 in cost to the Commission. Requests not exceeding $5 in cost to the Commission will be met without cost to the requester.

§ 1705.11 Penalties.

Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than 5 years or both to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)), makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Section 552a(i) (1) and (2) of the Privacy Act (5 U.S.C. 552a(i) (1) and (2)) provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

§ 1705.12 Exemptions.

No Commission records system is exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

PART 1706—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sec.

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4578, 4579, Feb. 5, 1986, unless otherwise noted.

§1706.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§1706.102 Application.

This part applies to all programs or activities conducted by the agency.

§1706.103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1706.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4578, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 1706.104—1706.109 [Reserved]

§ 1706.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 1706.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1706.112—1706.129 [Reserved]

§ 1706.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualfied handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1706.131—1706.139 [Reserved]

§ 1706.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1706.141—1706.148 [Reserved]

§ 1706.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1706.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1706.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1706.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is nor required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4578, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 1706.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 1706.152—1706.159 [Reserved]

§ 1706.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1706.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1706.161—1706.169 [Reserved]

§ 1706.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Deputy Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Deputy Director, National Commission on Libraries and Information Science, Suite 3122, GSA-ROB 3, Washington, DC 20024.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, amended (42 U.S.C. 4151-4157), or se tion 502 of the Rehabilitation Act 1973, as amended (29 U.S.C. 792), not readily accessible to and usable handicapped persons.

(g) Within 180 days of the receipt a complete complaint for which it h jurisdiction, the agency shall noti the complainant of the results of th investigation in a letter containing—

(1) Findings of fact and conclusion of law;

(2) A description of a remedy f each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fa and conclusions of law or remedi must be filed by the complainan within 90 days of receipt from th agency of the letter required § 1706.170(g). The agency may exten this time for good cause.

(i) Timely appeals shall be accept and processed by the head of th agency.

(j) The head of the agency sha notify the complainant of the resul of the appeal within 60 days of the r ceipt of the request. If the head of th agency determines that additional i formation is needed from the com plainant, he or she shall have 60 da from the date of receipt of the add tional information to make his or h determination on the appeal.

(k) The time limits cited in par graphs (g) and (j) of this section ma be extended with the permission the Assistant Attorney General.

(l) The agency may delegate its a thority for conducting complaint i vestigations to other Federal agenci except that the authority for makin the final determination may not delegated to another agency.

[51 FR 4578, 4579, Feb. 5, 1986, as amende at 51 FR 4578, Feb. 5, 1986]

§§1706.171—1706.999 [Reserved]

CHAPTER XVIII—HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

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PART 1800—PRIVACY ACT OF 1974

Sec.

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1800.3 Procedures for requests for access to individual records in a record system.
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AUTHORITY: 5 U.S.C. 552a; Pub. L. 93-579.

SOURCE: 41 FR 52677, Dec. 1, 1976, unless otherwise noted.

§ 1800.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the **Harry S. Truman Scholarship Foundation** (hereafter known as the Foundation) maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 1800.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Foundation, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term "system of records" means a group of any records under the control of the Foundation from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1800.3 Procedures for requests for access to individual records in a record system.

An individual shall submit a request to the Deputy Executive Secretary of the Foundation to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Deputy Executive Secretary of the Foundation which states the individual's desire to review his or her record.

§ 1800.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Deputy Executive Secretary of the Foundation pursuant to § 1800.3 shall present the request at the Foundation offices, 712 Jackson Place, NW., Washington, DC 20006, on any business day between the hours of 9 a.m. and 5 p.m. The individual submitting the request should present himself or herself at the Foundation's offices with a form of identification which will permit the Foundation to verify that the individual is the same individual as contained in the record requested.

§ 1800.5 Access to requested information to the individual.

Upon verification of identity the Foundation shall disclose to the individual the information contained in the record which pertains to that individual.

§ 1800.6 Request for correction or amendment to the record.

The individual should submit a request to the Deputy Executive Secretary of the Foundation which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with the provisions of § 1800.4.

§ 1800.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Deputy Executive Secretary of the Foundation will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Foundation for the individual to request a review of that refusal.

§ 1800.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Deputy Executive Secretary of the Foundation to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006. The Executive Secretary will, not later than thirty working days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Executive Secretary extends such thirty day period. If, after his or her review, the Executive Secretary also refuses to correct or to amend the record in accordance with the request, the individual may file with the Foundation a concise statement setting forth the reasons for his or her disagreement with the refusal of the Foundation and may seek judicial review of the Executive Secretary's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1800.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Foundation will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Foundation's notices of its systems of records.

§ 1800.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

PART 1801—HARRY S. TRUMAN SCHOLARSHIP PROGRAM

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AUTHORITY: Pub. L. 93-642, 88 Stat. 2276 (20 U.S.C. 2001-2012).

SOURCE: 53 FR 23239, June 21, 1988, unless otherwise noted.

Subpart A—General

§ 1801.1 Annual Truman Scholarship competition.

Each year, the Harry S. Truman Scholarship Foundation carries out a nationwide competition to select students to be Truman Scholars.

§ 1801.2 Truman Scholars are selected from each State.

(a) At least one Truman Scholar is selected each year from each State in which there is a resident applicant who meets the eligibility criteria in § 1801.3. In addition, the Board of Trustees may select additional Scholars-at-Large.

(b) As used in this part, "State" means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and considered as a single entity: Guam, the Virgin Islands American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1801.3 Students eligible for nomination.

A student is eligible to be nominated as a Truman Scholar if he or she:

(a) Is a matriculated student pursuing a degree at an institution of higher education during the year in which nominated;

(b) Will be a junior pursuing a bachelor's degree as a full-time student at an institution of higher education the following academic year;

(c) Has an undergraduate field of study that permits admission to a graduate program leading to a career in public service;

(d) Has an undergraduate average of at least "B" or its equivalent and ranks in the upper fourth of his or her class; and

(e) Is a U.S. citizen, a U.S. national or a permanent resident of the Commonwealth of the Northern Mariana Islands.

§ 1801.4 Definitions.

As used in this part:

"Academic year" means the period of time, typically 8 or 9 months in which a full-time student would normally complete two semesters, two trimesters, three quarters, or the equivalent.

"Foundation" means the Harry S Truman Scholarship Foundation.

"Full-time student" means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree or certificate toward which he or she is working, in no more than the length of time normally taken at the institution of higher education.

"Graduate study" means the courses of study beyond the baccalaureate level which may lead to an advanced degree.

"Institution of higher education" has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

"Junior" means a student who has received credit for more than one-half of the coursework required to com plete the second year of college, but not more than one-half of the coursework required to complete the third year of college.

"President" means the principal official responsible for the overall direction of the operations of an institution of higher education.

"Public service" means a career at any level or in any function of government, including, for example, government service activities in the health, engineering or military fields, as well as other fields of governmental activity.

"Resident" means a person who has legal residence in the State, recognized under State law. If a question arises concerning the State of residence, the Foundation determines, for the purposes of this program of which State the person is a resident, taking into account parent's place of residence, eligibility for "in-State" tuition rates at public institutions of higher education, and place of registration to vote.

"Senior" means the academic level recognized by the institution of higher education as having fourth year standing.

"Sophomore" means the academic level recognized by the institution of higher education as having second year standing.

"Work-experience program" means employment approved by the Foundation that involves an intensive period of practical work in Federal, State, or local government office.

Subpart B—Nominations

§ 1801.10 Nomination of institution of higher education.

To be considered in the competition a student must be nominated by the institution of higher education that he or she attends.

§ 1801.11 Annual nomination.

(a) Except as provided in §§ 1801.12 and 1801.13, each institution of higher education may nominate up to three students annually. If an institution chooses to nominate three students, the three may have legal residence in the same State, or in different States.

(b) All nominations must be made by the President of the institution or the designated Faculty Respresentative, after the President asks for and considers recommendations by the faculty.

§ 1801.12 Institutions with more than one campus.

If an institution of higher education has more than one component separately listed in the current edition of the publication Education Directory: Colleges and Universities (Published by the U.S. Department of Education), each component of the institution may nominate up to three students. However, a component that is organized solely for administrative purposes and has no students enrolled may not nominate a student.

§ 1801.13 Two-year institutions.

If an institution of higher education does not offer education beyond the sophomore level, the institution may nominate only students who will be a junior the following year at another institution of higher education.

§ 1801.14 Submission of application to the Foundation.

To nominate a student for the competition, the institution of higher education must send the student's application to the Foundation.

§ 1801.15 Faculty representative.

(a) Each institution which nominates a student or which has a Truman Scholar in attendance must give the Foundation the name, business address, and business telephone number of a member of the faculty who will serve as liaison between the institution and the Foundation.

(b) It is the role of this Faculty Representative to publicize the Truman Scholarship Program on campus, solicit recommendations of potential nominees from members of the faculty, and insure that the institution's nomination with all required supporting documents, is forwarded to the Foundation by the required deadline.

§ 1801.16 Closing date for receipt of nominations.

The Foundation publishes an annual notice in the Federal Register of the date, usually December 1, by which institutions of higher education must submit their nominations and all supporting documents in order to be guaranteed consideration by the Foundation.

§ 1801.17 Contents of application.

(a) The Foundation provides a form that must be used as the application.

(b) Each application must include the following:

(1) A statement that the student is an applicant for a Truman Scholarship;

(2) A statement that the student plans to pursue a career in public service;

(3) A list of the student's public service activities, such as those associated with government agencies, community groups, political campaigns, and charities;

(4) A list of leadership positions the student has held during high school and during the first two years of undergraduate school;

(5) A statement that the student is willing to participate in an internship or seminar sponsored by the Foundation;

(6) A statement of interest in a career in government, written by the student, that shows in some detail how the student's academic program and overall education plans will prepare him or her for that chosen career.

(c) In support of each nomination the following documents must also be submitted:

(1) An essay of 600 words or less written by the student that analyzes a particular public policy issue of interest to the student;

(2) Transcripts of the student's high school and undergraduate scholastic record; and

(3) Three letters of recommendation. One of these letters must be written by a faculty member in the student's field of study, and one must be written by another person who can speak to the student's potential for a career in public service.

Subpart C—The Competition

§ 1801.20 Selection of semifinalists.

The Foundation selects semifinalists from the students who are nominated.

§ 1801.21 Evaluation criteria.

(a) The Foundation selects semifinalists from the students nominated on the basis of the following criteria:

(1) The extent to which the student has shown an outstanding potential for leadership in the public service; and

(2) The student's academic performance.

(b) The Foundation evaluates each student solely on the basis of the information required under § 1801.17.

§ 1801.22 Interview of student with regional review panel.

The Foundation invites each semifinalist to an interview with a regional review panel.

§ 1801.23 Recommendation by panel.

(a) Each regional review panel recommends two finalists from each State to the Foundation. In addition, the Board of Trustees may authorize each regional review panel to recommend additional "Scholars-at-Large" from the States in its region.

(b) The finalists must be recommended by the panel in the order of their qualification to be a Truman Scholar.

(c) The recommendations are based on the material required under § 1801.17 and, as determined in the interview, the panel's assessment of each semifinalist's potential for leadership in government.

§ 1801.24 Further recommendations or nominations.

(a) The Foundation may ask a regional review panel to submit the names of additional finalists for consideration, or may ask institutions of higher education to submit additional nominations.

(b) If additional nominations are made under paragraph (a) of this section, the applications must meet the requirements of Subpart B of this part, and are considered under the procedures of this subpart.

§ 1801.25 Selection of Truman Scholars by the Foundation.

(a) The Foundation names Truman Scholars after receiving recommendations from the regional review panels.

(b) The Foundation may name an alternate for each Truman Scholar. The alternate receives the scholarship if:

(1) The person named as Truman Scholar is not able to begin studies at the start of the following academic year, and

(2) Payments are not postponed under § 1801.54.

Subpart D—Graduate Study and the Work Experience Program

§ 1801.30 Continuation into graduate study.

(a) The Foundation will not conduct a new and separate competition for graduate scholarships, nor will it add new Truman Scholars at the graduate level.

(b) Only Truman Scholars who satisfactorily complete their undergraduate education and who comply with § 1801.31 shall be eligible for continued Foundation support for an approved program of graduate study.

§ 1801.31 Approval of graduate programs by the Foundation.

(a) Early in their senior year, Truman Scholars desiring Foundation support for graduate study must submit a proposed program of graduate study to the Foundation for approval. The proposed program may subsequently be changed with the approval of the Foundation.

(b) Foundation approval of the Scholar's proposal is required before financial support is granted for graduate work.

(c) Scholars must include in their submission to the Foundation a statement of interest in a career in government that specifies in some detail how their graduate program and their overall educational plans will prepare them for their chosen career goal.

(d) Scholars may offer relevant and appropriate fields of study that will help prepare them for a career in government.

§ 1801.32 Eligible colleges and degree programs.

(a) Truman Scholars at the graduate level may study at any accredited college or university that offers graduate study.

(b) They may enroll in any relevant graduate program, including masters of arts, masters of public administration, masters of business administration, law, medicine, engineering or doctoral study.

(c) Foundation support for graduate study is restricted to two full-time years of study.

§ 1801.33 The work experience program.

(a) The Foundation encourages all Truman Scholars without substantial previous government experience to participate in a voluntary program of work experience in the public service. This would typically occur after the completion of the baccalaureate degree.

(b) These apprenticeships are intensive periods of practical work ranging up to a year in length in a Federal, State, or local government office arranged with the approval of the Foundation.

(c) Although the Foundation is not authorized to provide financial support during this period, it will attempt to assist Scholars to make appropriate work experience arrangements.

Subpart E—Amount of Payments to Students

§ 1801.40 Travel expenses of semi-finalists.

(a) Each semi-finalist may receive reimbursement for the actual and necessary expenses of round trip transportation to the location of the regional review panel.

(b) The Foundation uses the Federal Travel Regulations (referenced in 41 CFR 101-7.003) as a guide to determine the amount of the reimbursement.

(c) The Foundation informs semi-finalists of the procedures for obtaining this reimbursement.

§ 1801.41 Scholarship awards.

Each Truman Scholar receives annually $7,000 or the cost of tuition, fees, books, and room and board, whichever is less.

§ 1801.42 Definition of "fee".

As used in this part, "fee" means a typical and usual non-refundable charge by the institution of higher education for a service, a privilege, or the use of property which is required for Scholars' enrollment and registration.

§ 1801.43 Allowance for books.

The cost allowance for a student's books is $180 per year.

§ 1801.44 Allowance for room and board.

The cost allowed for a student's room and board is the amount the institution of higher education reports to the Foundation as the average cost of room and board for the student's institution, given the type of housing the student occupies.

§ 1801.45 Deduction for benefits from other sources.

The cost allowed for a student's tuition, fees, books, and room and board must be reduced to the extent that the cost is paid for by another organization.

Subpart F—Payment Conditions and Procedures

§ 1801.50 Acceptance of the scholarship.

To receive any payment, a Truman Scholar must sign an acceptance of the scholarship and submit it to the Foundation.

§ 1801.51 Report at the beginning of each term.

The Truman Scholar must submit the following material to the Foundation at the beginning of each term:

(a) A statement of the student's costs for tuition, fees, books, and room and board.

(b) A certification by an authorized official of the institution that the statement of those costs is accurate.

(c) A certification of the amounts o those costs that are paid for by an other organization.

(d) A certification by an authorize official of the institution that th Truman Scholar:

(1) Is a full-time student and i taking a course of study, training, o other educational activities to prepar for a career in public service; and

(2) Is not engaged in gainful employment that interferes with the Scholar's studies.

(e) A certification by an authorize official of the institution of whethe the Truman Scholar is in academi good standing.

§ 1801.52 Definition of "term".

As used in this part, "term" mean the period which the institution o higher education uses to divide its academic year: Semester, trimester, o quarter.

§ 1801.53 Payment schedule.

The Foundation will pay th Truman Scholar a portion of th award after each report submitte under § 1801.51.

§ 1801.54 Postponement of payment.

(a) A Truman Scholar may reques the Foundation to postpone one o more payments because of sickness o other circumstances.

(b) If the Foundation grants a postponement, it may impose such conditions as it decides are necessary.

Subpart G—Duration of Scholarship

§ 1801.60 Renewal of scholarship.

It is the intent of the Foundation t renew scholarship awards for a perio not to exceed a total of four academi years (consisting of the junior year the senior year and up to two academic years of graduate study), only in accordance with the regulations established by its Board of Trustees, and subject to an annual review for compliance with the requirements of this part.

§ 1801.61 Termination of scholarship.

(a) The Foundation may terminate a scholarship under the following specific conditions:

(1) If the Truman Scholar does not meet the criteria in § 1801.51(e) for two consecutive terms, or

(2) If the Truman Scholar does not meet the criteria in § 1801.31, § 1801.51(d) or § 1801.3(e).

(b) Before it terminates a scholarship under these conditions the Foundation gives the student notice and an opportunity to be heard with respect to the grounds for termination.

§ 1801.62 Recovery of scholarship funds.

If a scholarship is terminated or if the student resigns a scholarship, all scholarship funds which have not been spent or which the student may recover must be returned to the Foundation.

PART 1802—PUBLIC MEETING PROCEDURES OF THE BOARD OF TRUSTEES

Sec.

1802.1 Purpose and scope.
1802.2 Definitions.
1802.3 Open meetings.
1802.4 Grounds on which meetings may be closed, or information may be withheld.
1802.5 Procedure for announcing meetings.
1802.6 Procedure for closing meetings.
1802.7 Transcripts, recordings, minutes of meetings.

AUTHORITY: 5 U.S.C. 552b(g); 20 U.S.C. 2001-2012.

SOURCE: 42 FR 14722, Mar. 16, 1977, unless otherwise noted.

§ 1802.1 Purpose and scope.

The Harry S. Truman Scholarship Foundation will provide the public with the fullest practical information regarding its decision-making processes while protecting the rights of individuals and the Foundation's abilities to carry out its responsibilities. Accordingly, these procedures apply to meetings of the Board of Trustees, Harry S. Truman Scholarship Foundation, including committees of the Board of Trustees.

§ 1802.2 Definitions.

As used in this part:

"Board" or "Board of Trustees" means the collegial body that conducts the business of the Harry S. Truman Scholarship Foundation as specified in section 5(b), Pub. L. 93-642 (20 U.S.C. 2004), consisting of:

(a) Eight persons appointed by the President, by and with the advice and consent of the Senate;

(b) Two members of the Senate, one from each political party, appointed by the President of the Senate;

(c) Two members of the House of Representatives, one from each political party, appointed by the Speaker; and

(d) The Commissioner of Education or his designee, who serves as an ex officio member of the Board.

"Chairman" means the presiding officer of the Board.

"Committee" means any formally designated subdivision of the Board, consisting of at least two Board members, authorized to act on behalf of the Board, including the Board's standing committees and any ad hoc committees appointed by the Board for special purposes.

"Executive Secretary" means the individual appointed by the Board to serve as the chief executive officer of the Foundation.

"Meeting" means the deliberations of at least the number of individual voting members of the Board required to take action on behalf of the Board, where such deliberations determine or result in the joint conduct or disposition of official business of the Board, but does not include: (1) Deliberations to open or close a meeting, to establish the agenda for a meeting, or to release or withhold information, required or permitted by § 1802.5 or § 1802.6, (2) notation voting or similar consideration of matters whether by circulation of material to members individually in writing, or polling of members individually by telephone or telegram and (3) instances where individual members, authorized to conduct business on behalf of the Board or to take action on behalf of the Board, meet with members of the public or staff. Conference telephone calls that involve the requisite number of members, and otherwise come within the definition, are included.

"Member" means a member of the Board of Trustees.

"Staff" includes the employees of the **Harry S. Truman Scholarship** Foundation, other than the members of the Board.

§ 1802.3 Open meetings.

(a) Members shall not jointly conduct or dispose of business of the Board of Trustees other than in accordance with these procedures. Every portion of every meeting of the Board of Trustees or any committees of the Board shall be open to public observation subject to the exceptions provided in § 1802.4.

(b) Open meetings will be attended by members of the Board, certain staff, and any other individual or group desiring to observe the meeting. The public will be invited to observe and listen to the meeting but not to participate. The use of cameras and disruptive recording devices will not be permitted.

§ 1802.4 Grounds on which meetings may be closed, or information may be withheld.

Except in a case where the Board or a committee finds that the public interest requires otherwise, the open meeting requirement as set forth in the second sentence of § 1802.3(a) shall not apply to any portion of a Board or committee meeting, and the informational disclosure requirements of §§ 1802.5 and 1802.6 shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board or committee, as applicable, properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(a) Disclose matters that are: (1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive Order;

(b) Relate solely to the internal personnel rules and practices of the **Harry S. Truman Scholarship Foundation**;

(c) Disclose matters specifically exempted from disclosure by statute (other than section 552, Title 5, United States Code), provided that such statute: (1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial and financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except that this paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the issuance of a subpoena, or Foundation participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Foundation of a particular case of formal adjudication pursuant to the procedures in Section 554 of Title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing.

§ 1802.5 Procedure for announcing meetings.

(a) Except to the extent that such information is exempt from disclosure under the provisions of § 1802.4, in the case of each Board or committee meeting, the Executive Secretary, acting at the direction of the Board, shall publish in the FEDERAL REGISTER, at least seven days before the meeting, the following information:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting or parts thereof are to be open or closed to the public; and

(5) The name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting.

(b) The seven-day period for the public announcement required by paragraph (a) of this section may be reduced if a majority of the members of the Board or committee, as applicable, determine by a recorded vote that Board or committee business requires that such expedited meeting be called at an earlier date. The Board or committee shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(c) The time or place of a meeting may be changed following the public announcement required by paragraph (a) only if the Executive Secretary, acting at the direction of the Board, publicly announces such change at the earliest practicable time. Such change need not be voted on by the members.

(d) The subject matter of a meeting, or the determination of the Board or committee, as applicable, to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraph (a) of this section only if: (1) A majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, determines by a recorded vote that Board or committee business so requires and that no earlier announcement of the change was possible, and

(2) The Board or committee publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(e) The "earliest practicable time" as used in this section, means as soon as possible, which should in few, if any, instances be no later than commencement of the meeting or portion in question.

(f) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

§ 1802.6 Procedure for closing meetings.

(a) Action to close a meeting or a portion thereof, pursuant to the exemptions set forth in § 1802.4, shall be taken only when a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, as applicable, vote to take such action. Any such action shall include a specific finding by the Board that an open meeting is not required by the public interest.

(b) A separate vote of the Board or committee members shall be taken with respect to each Board or committee meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 1802.4 or with respect to any information which is proposed to be withheld under § 1802.4.

(c) A single vote of the Board or committee may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(d) The vote of each member shall be recorded, and may be by notation voting, telephone polling or similar consideration.

(e) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board or a committee close such portion to the public under any of the exemptions relating to personal privacy, criminal accusation, or law enforcement information referred to in paragraph (e), (f), or (g) of § 1802.4, the Board or committee, as applicable, upon request of any one of its members, shall vote by recorded vote whether to close such meeting. Where the Board receives such a request prior to a meeting, the Board may ascertain by notation voting, or similar consideration, the vote of each member of the Board, or committee, as applicable, as to the following:

(1) Whether the business of the Board or committee permits consideration of the request at the next meeting, and delay of the matter in issue until the meeting following, or

(2) Whether the members wish to close the meeting.

(f) Within one day of any vote taken pursuant to paragraph (a), (b), (c) or (e), of this section, the Board or committee shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Board or committee shall, within one day of the vote taken pursuant to paragraph (a), (b), (c), or (e) of this section, make publicly available a full written explanation of its action closing the portion

together with a list of all persons
pected to attend the meeting and t
affiliation. The information requ
by this paragraph shall be discl
except to the extent it is exempt f
disclosure under the provisions
§ 1802.4.

(g) For every meeting closed pu
ant to § 1802.4, the General Couns
the Harry S. Truman Scholar
Foundation shall certify before
meeting may be closed that, in hi
her opinion, the meeting may
closed to the public and shall s
each relevant exemptive provisio
copy of such certification, toge
with a statement from the presi
officer of the meeting setting f
the time and place of the meeting,
the persons present, shall be reta
by the Board as part of the transc
recording or minutes required
§ 1802.7.

§ 1802.7 Transcripts, recordings, min of meetings.

(a) The Board of Trustees s
maintain a complete transcript or
tronic recording adequate to re
fully the proceedings of each mee
or portion of a meeting, closed to
public, except that in the case
meeting closed to the public purs
to paragraph (j) of § 1802.4, the B
shall maintain either such a trans
or recording, or a set of minutes.

(b) Where minutes are mainta
they shall fully and clearly describ
matters discussed and shall provi
full and accurate summary of any
tions taken, and the reasons for
actions, including a description of
of the views expressed on any
and the record of any roll call vote
flecting the vote of each member
the question). All documents con
ered in connection with any ac
shall be identified in such minutes.

(c) The Board shall maintain a c
plete verbatim copy of the transc
a complete copy of the minutes,
complete electronic recording of
meeting or portion of a meet
closed to the public, for a period o
least two years after such meeting
until one year after the conclusio
any Board proceeding with respec

which the meeting or portion was held, whichever occurs later.

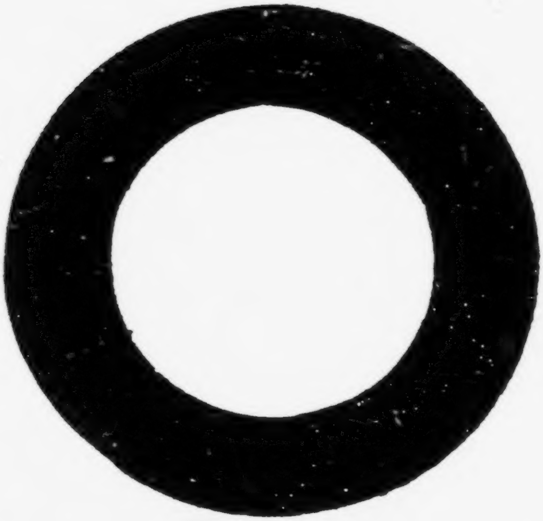
(d) Public availability of records shall be as follows:

(1) Within ten days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Foundation shall make available to the public, in the offices of the Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, D.C., the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting except for such item or items of such discussion or testimony as the General Counsel determines to contain information which may be withheld under § 1802.4.

(2) Copies of such transcript, or minutes, or a transcription of such recording disclosing the identify of each speaker, shall be available at the actual cost of duplication or transcription.

(3) The determination of the General Counsel to withhold information pursuant to paragraph (d)(1) of this section may be appealed to the Board. The appeal shall be circulated to individual Board members. The Board shall make a determination to withhold or release the requested information within twenty days from the date of receipt of a written request for review (excluding Saturdays, Sundays, and legal public holidays).

(4) A written request for review shall be deemed received by the Board when it has arrived at the offices of the Board in a form that describes in reasonable detail the material sought.



CHAPTER XX—COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

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PART 2000—ORGANIZATION AND FUNCTIONS

Subpart A—Commission Organization

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AUTHORITY: Pub. L. 98-101; 97 Stat. 719; 5 U.S.C. 552.

SOURCE: 51 FR 7220, Feb. 28, 1986, unless otherwise noted.

Subpart A—Commission Organization

§ 2000.10 Authorization.

The Commission on the Bicentennial of the United States Constitution was authorized by Pub. L. 98-101, 97 Stat. 719, signed by the President on September 29, 1983. Appointment of the Commission and designation of the Chairman were announced by the President on June 25, 1985. Commission members were sworn into office on July 30, 1985. The first meeting of the Commission was held on July 29 and 30, 1985.

§ 2000.11 The Commission.

(a) *Composition.* The Commission is composed of 23 members chosen and appointed in accordance with section 4 of Pub. L. 98-101, 97 Stat. 719, as follows:

(1) Twenty members appointed by the President;

(2) The Chief Justice of the United States or his designee;

(3) The President pro tempore of the United States or his designee;

(4) The Speaker of the United Sta
House of Representatives or his des
nee.

(b) *Recommendations for appoi*
ment. Of the 20 members appointed
the President, 12 are appointed fr
recommendations made as follows:

(1) Four were appointed from amo
recommendations made by the Ch
Justice of the United States;

(2) Four were appointed from amo
recommendations made by the Pre
dent pro tempore of the United Sta
Senate;

(3) Four were appointed from amo
recommendations made by the Spe
er of the United States House of R
resentatives.

(c) *Balanced membership.* In maki
recommendations to the President
garding appointments to the Comm
sion, the statutory mandate was
achieve a balanced membership rep
senting, to the maximum extent pr
ticable, the Nation as a whole.

(d) *Term of Commissioners.* Me
bers of the Commission are appoint
for the life of the Commission, whi
terminates December 31, 1989.

(e) *Service without compensati*
Members of the Commission ser
without being compensated as
member of the Commission, exce
that each member is reimbursed
travel, subsistence and other necessa
expenses incurred in performance
Commission duties.

(f) *Vacancies.* A vacancy in the Co
mission must be filled in the sa
manner in which the original appoi
ment was made. A vacancy does n
affect the powers of the Commission

(g) *Quorum.* Twelve members of t
Commission constitute a quorum, b
a lesser number may conduct me
ings.

(h) *Qualifications.* Commissi
members are required to be chos
from among individuals who ha
demonstrated scholarship, a stro
sense of public service, expertise in t
learned professions, and abilities like
to contribute to the fulfillment of t
duties of the Commission.

§ 2000.12 The Chairman.

(a) The Chairman of the Comm
sion is the Chief Justice of the Unit

States, who is also a member of the Commission.

(b) The Chairman is designated by the President of the United States and serves at the pleasure of the President.

(c) The Chairman is authorized by the Commission to appoint an Executive Committee and such committees of the Commission as the Chairman believes will advance and expedite the work of the Commission.

§ 2000.13 Purpose, duties and responsibilities.

(a) The primary purpose of the Commission is to promote and coordinate activities to commemorate the bicentennial of the United States Constitution.

(b) The duties of the Commission include the following:

(1) To plan and develop activities to commemorate the bicentennial of the Constitution, including a limited number of projects to be undertaken by the Federal Government;

(2) To encourage private organizations, and State and local governments, to organize and participate in bicentennial activities commemorating or examining the drafting, ratification, and history of the Constitution and the specific features of the document;

(3) To coordinate, generally, commemorative bicentennial activities throughout all of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of American Samoa, Guam and the Virgin Islands; and

(4) To serve as a clearinghouse for the collection and dissemination of information about the bicentennial events and plans.

(c) The Commission is required to submit an annual report to the President, to each House of the Congress, and to the Judicial Conference of the United States.

(d) The Commission is directed to seek the cooperation, advice and assistance of both public and private organizations, including governmental agencies.

§ 2000.14 Delegation to State Commissions.

In carrying out its purposes, the Commission may delegate authority to State bicentennial advisory commissions to assist in implementing Pub. L. 98-101, 97 Stat. 719.

Subpart B—Powers and Functions

§ 2000.20 Personnel.

(a) In carrying out its functions and responsibilities, the Commission is empowered:

(1) To appoint a Staff Director;

(2) To appoint and fix the compensation of such additional publicly paid personnel as the Chairman finds necessary to carry out the purposes of the Commission;

(3) To appoint and fix the pay of additional personnel to be paid out of private donations, not to exceed forty staff members;

(4) To request the head of any Federal agency to detail to the Commission, without reimbursement to the agency, such personnel as the Commission may require for carrying out its duties and functions.

(b) The Staff Director has responsibility for administering the work of the Commission's staff under the oversight of the Chairman and the Commission.

§ 2000.21 Facilities and services.

(a) To accomplish its purposes, the Commission is authorized to procure supplies, services and property, within the limits of appropriated or donated funds, and to enter into agreements with the General Services Administration.

(b) The Commission may use the United States mails in the same manner and under the same conditions as other Federal departments and agencies.

§ 2000.22 Donations to Commission.

(a) *Authorization.* The Commission is authorized to accept, use, solicit and dispose of donations of money, property, or personal services.

(b) *Limits.* Donations may not exceed:

(1) $25,000 in value annually, in the case of individual donors, or

(2) $100,000 in value annually in the case of donations from a corporation, partnership, or other business organization.

(c) *Nonprofit donors.* There is no limit on donations from a nonprofit organization which is tax exempt and qualified under section 501(c)(3) of the Internal Revenue Code.

Subpart C—Commemorative Activities

§ 2000.30 Planning considerations.

(a) In planning and implementing appropriate activities to commemorate the bicentennial, the Commission shall give due consideration to the following:

(1) The historical setting in which the Constitution was developed and ratified;

(2) The contribution of diverse ethnic and racial groups;

(3) The relationship and historical development of the three branches of the Government;

(4) The importance of activities concerning the Constitution and citizenship education throughout all of the States regardless of when each State achieved statehood;

(5) The unique achievements and contributions of the participants in the Constitutional Convention of 1787 and the State ratification proceedings;

(6) The diverse legal and philosophical views regarding the Constitution;

(7) The need for reflection upon academic and scholarly views of the Constitution as well as the principle that the general public also must understand the document, its contents and meaning.

(8) The substantive provisions of the Constitution itself;

(9) The impact of the Constitution on American life and government;

(10) The need to encourage appropriate educational curriculums designed to educate students at all levels on the drafting, ratification, and history of the Constitution and its specific provisions; and

(11) The significance of the principles and institutions of the Constitution to other nations and their citizens.

Subpart D—Commission Operations

§ 2000.40 Offices of the Commission.

The offices of the Commission are located at 734 Jackson Place, NW., Washington, DC 20503. There are no field offices.

PART 2001—PROJECT RECOGNITION AND USE OF LOGO

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2001.12 Nonexclusive involvement.

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2001.25 Applications for logo use.
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Appendix A to Part 2001—National Bicentennial Logo

Appendix B to Part 2001—Application for Project Recognition

Appendix C to Part 2001—Bicentennial Community Application

Appendix D to Part 2001—Application for Logo License

Appendix E to Part 2001—Bicentennial Campus Application

AUTHORITY: Pub. L. 98-101, 97 Stat. 719; as amended by Pub. L. 99-549, 100 Stat. 3063; 5 U.S.C. 552.

SOURCE: 51 FR 36786, Oct. 15, 1986, unless otherwise noted.

Subpart A—General Policies

§ 2001.10 Commission policy.

The Commission on the Bicentennial of the United States Constitution was established by Pub. L. 98-101 to promote and coordinate activities to commemorate the bicentennial of the Constitution. All public and private groups are encouraged to conduct activities that will foster awareness, knowledge and appreciation of the Constitution of the United States, the establishment of the Federal Government and passage of the Bill of Rights. Insofar as its resources permit, the Commission will offer information, advisory assistance, and coordination to individuals and groups interested or involved in bicentennial activities.

§ 2001.11 Financial support decisions.

Commission involvement with a project in any of the ways herein described does not obligate the Commission to contribute financial support to that project. Any decision to provide financial support to a bicentennial project shall be considered by the Commission separately and on its own merits in relation to the resources of the Commission.

§ 2001.12 Nonexclusive involvement.

Unless otherwise indicated by the Commission in advance and in writing, Commission involvement with a project will not in any way limit the Commission from involving itself in other projects of the same or a similar nature.

Subpart B—National Bicentennial Logo

SOURCE: 52 FR 2384, Jan. 21, 1987, unless otherwise noted.

§ 2001.20 Design and adoption.

(a) Under the authority granted by section 5(j) of Pub. L. 98-101, as amended by Pub. L. 99-549, the Commission has designed, adopted and designated a National Bicentennial Logo for use as the official emblem of the bicentennial of the Constitution and the Bill of Rights. This design is depicted and described in Appendix A to this part of the Commission's regulations.

(b) Publication of this regulation and of Appendix A in the FEDERAL REGISTER shall constitute notice of designation of the Bicentennial Logo as required by Pub. L. 99-549. It is hereby designated the official symbol, mark and emblem of the bicentennial and this designation shall include any likeness of this Logo which, in whole or in part, is used in such manner as to suggest this Logo. Its authorized use shall be governed by these regulations.

§ 2001.21 Authorized use of logo.

(a) Authorization for use of the National Bicentennial Logo shall be granted at the sole discretion of the Commission and in accord with these regulations. Reproduction of the Logo is permitted only after written authorization of the Commission. Authorized users may not delegate or assign use of the Logo to others unless authorized to do so in writing by the Commission or by these regulations. The Commission may use the Logo in whatever manner it deems suitable and appropriate for the Commission in carrying out its duties and purposes under Pub. L. 98-101, as amended.

(b) Unless otherwise authorized in writing, the Logo shall be reproduced in its entirety as adopted by the Commission and depicted in Appendix A to Part 2001. It shall not be altered nor may it be overprinted with any legend, symbol or other marking. All uses of the Logo should incorporate high standards of design, dignity and taste. When used by officially recognized

State Bicentennial Commissions, Bicentennial Communities, nonprofit organizations and officially recognized project sponsors or cosponsors, the Logo shall bear a legend beneath it that reflects authorization for use in accordance with these regulations.

§ 2001.22 Use of logo on goods and services.

(a) The Commission is authorized in its sole discretion to permit the manufacture, reproduction, use, sale, and distribution of the National Bicentennial Logo for its own purposes, by public entities, and by both profit motivated and nonprofit organizations, in accordance with these regulations and such other rules as it may adopt.

(b) Use of the Bicentennial Logo shall be authorized by the Commission only for programs, projects, goods and services which are educational or commemorative in nature and which relate to the bicentennial of the United States Constitution, the establishment of the Federal Government, or the Bill of Rights. The Commission shall be the sole judge of whether a proposed use of the Logo qualifies as educational or commemorative.

(c) None of the programs, projects, goods or services as to which use of the Logo is authorized shall exploit the United States Constitution or the Bill of Rights. No use of the Logo shall be authorized which is unrelated to the purpose and goals of the Commission.

(d) The purpose of the Commission in authorizing use of the Logo shall not be primarily or exclusively to raise funds. The principal purpose shall be to recognize and encourage worthy projects, goods and services which enhance the bicentennial commemoration and advance the goals of the Commission.

§ 2001.23 Criteria for logo use.

(a) Products, goods or services as to which the National Bicentennial Logo is authorized for use shall meet or conform to the following guidelines:

(1) They shall be in good taste as perceived by the Commission.

(2) They shall be of good quality or of unique craftsmanship, as determined by the Commission.

(3) They shall meet applicable indu
try standards and safety requirement

(4) They shall be manufactured, pr
duced, used, sold or distributed by a
established company or organization.

(5) They shall be made in the Unit
States or its territories and posse
sions, with any exceptions requiri
approval of the Commission.

(b) They shall in no way reflect ne
atively upon the Government, the b
centennial commemoration, the Co
stitution or the Commission's acti
ties.

§ 2001.24 Fees, rights and limits.

(a) The use of the Bicentennial Lo
on or in connection with project
goods or services to be manufacture
produced, sold or distributed by pr
vate persons, corporations or oth
business organizations, shall be a
thorized solely under such a licens
sale, sponsorship or other agreeme
between the user and the Commissio
as shall be satisfactory to the Commi
sion.

(b) The Commission may char
such fees, royalties, commissions
other fixed money return as it ma
deem appropriate for each authoriz
use of the Bicentennial Logo. It ma
waive all or part of such a fee when
determines, in its sole discretion, th
the purposes of the bicentennial just
fy such a waiver. Nonprofit educatio
al organizations involved with acti
ties or programs dealing with the b
centennial shall not be charged a f
for any use of the Logo approved
authorized by the Commission.

(c) The Commission may authori
and limit use of the Logo in exchan
for donations to the Commission,
contributions in support of the bice
tennial, or both, in accordance wit
guidelines to be established by th
Commission.

(d) An authorization granted for us
of the Logo may be revoked or othe
wise terminated by the Commission.

§ 2001.25 Applications for logo use.

(a) Applications for authorized us
of the National Bicentennial Lo
shall be submitted in writing to: Co
mission on the Bicentennial of th
United States Constitution, 736 Jac

son Place NW., Washington, DC 20503; Attention: Marketing Department.

(b) Such applications should set forth clearly (1) the name, address and telephone number of the sponsor; (2) a brief description of the proposed use of the Logo; (3) the proposed terms of any royalties or other fees to be paid to the Commission; (4) the intended use, sale, distribution or market of the good or service involved; and (5) pertinent information on the business experience or established record of the sponsor.

(c) An application shall also state the name of the person with authority to negotiate and enter into a binding contract with the Commission and it shall contain a statement as to anticipated commemoration benefits from use of the Logo.

(d) An application for use of the Logo on commercial goods and services from a profit-motivated applicant shall be submitted on a form, or shall contain all of the information requested on the form which is supplied by the Commission and is entitled, "Commercial Logo License Application." A copy of this Application is reproduced and made a part of these regulations as Appendix D to this part.

(e) All applications shall be reviewed by Commission committees or staff, or both, and those deemed meritorious shall be submitted to the Commission for final approval. In the review process, the Commission reserves the right to request further information on proposals and sponsors.

(f) The terms of all license, sponsorship, waiver, or other agreements for use of the Logo shall be negotiated between proposal sponsors and the Commission prior to any final grant of authority for use of the Logo.

(g) The Commission reserves the right to grant an exclusive use of the Logo in those circumstances where such use is deemed to be warranted within the terms of Pub. L. 98-101, as amended, and the purposes of the Commission.

§ 2001.26 State bicentennial commissions.

(a) An officially recognized state bicentennial commission, without charge, may authorize the manufacture and reproduction of the National Bicentennial Logo solely for its own use, sale and distribution. No authority is delegated to a state bicentennial commission to license or sell the Logo to a profit-motivated person, corporation, business organization or similar entity. Under § 2001.36 of these regulations, a state bicentennial commission may grant use of the Bicentennial Logo to nonprofit organizations.

(b) Nothing in these regulations is intended to preempt any state bicentennial commission from celebrating the bicentennial of the Constitution in any manner it may determine, and nothing herein shall prevent a state bicentennial commission from establishing its own logo, symbol or mark in connection with its activities. A state bicentennial commission is fully authorized, within the limits of state and local law, to manufacture, reproduce, use, sell, license, and distribute its own logo.

§ 2001.27 Designated bicentennial communities.

(a) An officially recognized and designated bicentennial community, without charge, may authorize the manufacture and reproduction of the National Bicentennial Logo solely for its own use, sale and distribution. No authority is delegated to a designated bicentennial community to license or sell the Logo to a profit-motivated person, corporation, business organization or similar entity. Under § 2001.37, a designated bicentennial community may grant use of the Logo to nonprofit organizations. A designated bicentennial community may adopt its own logo, symbol or mark and is fully authorized, within the limits of State and local law, to determine the use of its logo.

§ 2001.28 Informational use of logo.

(a) *Federal agencies.* The Commission has authorized use of the National Bicentennial Logo by Federal agencies and departments on their stationery and publications to the extent that such use is otherwise permitted by law. This designation of Federal agencies and departments is defined to include all organizations of the U.S. Government, including those of the executive, the legislative and the judicial branches. Use of the Logo is authorized only under the following conditions:

(1) Each agency, department, Congressional office or judicial organization wishing to use the Logo shall submit a written request approved or signed by the head of the agency, department, Congressional office or judicial organization involved.

(2) If the Logo is desired for use on Government publications, a list of the names and types of publications should be supplied to the Commission. If possible, sample copies should be sent to the Commission.

(3) Written requests, lists of publications and sample copies should be sent to: Staff Director, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place NW., Washington, DC 20503; Attention: Federal Programs Division.

(4) Approval of each request for Logo use shall be made by the Commission Staff director or his designee following review of staff analysis and recommendations. A written response to each request shall be provided by the Staff Director together with copies of the Logo and directions for its use.

(5) Each agency, department, Congressional office or judicial organization shall be informed of the correct design uses of the Logo and of prohibitions on its use. Permission to use the Logo does not authorize an agency to grant use of the Logo to any other Government or private organization by any form of subsequent agreement, lease of contract.

(b) *General media use.* The National Bicentennial Logo is available on request to the general media in connection with news stories, informational articles and public awareness uses. Copies of the Logo and guidelines for its use shall be available on request to all print and electronic news services, publications, or representatives thereof, solely for the purpose of informing the general public about the Commission and its activities or the commemoration of the Constitution and its bicentennial.

§ 2001.29 Penalties for unauthorized use.

(a) Under section 5(j)(3) of Pub. L. 98-101 as amended, whoever manufactures, reproduces, uses, sells, or distributes the National Bicentennial Logo without authorization in writing granted in accordance with these regulations,

(1) Shall be fined not more than $250 or imprisoned not more than 6 months, or both; and

(2) Shall be subject to a civil penalty in an amount equal to the amount of the fee which would have been payable by that person or organization under § 2001.24.

(b) The Commission has registered the National Bicentennial Logo as a trademark with the United States Patent and Trademark Office. This registration is a recognition and notice of the Commission's ownership thereof, and evidence of the Commission's exclusive right to use the Logo in commerce. No person or organization has the right to use a mark in commerce which is in identical form or in such near resemblance to the Logo as may be likely to cause confusion or mistake, or to deceive the public.

(c) The penalties applicable under this section are cumulative and in addition to other remedies available to the Commission under contract, statute, common law or otherwise.

(d) No suit, action, or other proceeding lawfully commenced under the Commission's regulations at 45 CFR 2001.24, before January 1, 1987, shall abate by reason of the change in law. Determination of law with respect to any such suit, action, or other proceeding shall be made as if no change in law had occurred.

Subpart C—Involvement with Bicentennial Projects

§ 2001.30 Commission decisions.

Unless delegated by vote of the Commission to a committee of the Commission, or to the Commission's Staff Director, authority to decide Commission involvement with projects remains with the full Commission. Commission involvement with bicentennial projects shall be determined by written decisions on each project as set forth herein.

§ 2001.31 Withdrawal of involvement.

The Commission reserves the right at all times and with respect to any project to withdraw its involvement or recognition, or both, including any authorization for use of the Logo.

§ 2001.32 Types of projects.

There are five forms of Commission involvement with bicentennial projects. These are identified as Commission Projects, Cosponsored Projects, Officially Recognized Projects, State Bicentennial Commissions, and Designated Bicentennial Communities. The details as to each type of project recognition are set forth in the following sections of this subpart.

§ 2001.33 Commission projects.

Commission projects are defined as projects of national or international significance, for the development and implementation of which the Commission takes full responsibility. Such projects will be few in number and approved in advance by the Commission.

§ 2001.34 Cosponsored projects.

(a) *Commission participation.* The Commission may choose to cosponsor a limited number of projects with private and public organizations, domestic and foreign, including all branches and agencies of the Federal Government. In doing so, the Commission reserves the option to participate in a project's development and implementation, although primary responsibility for the project will ordinarily rest with the other sponsor or sponsors. The Commission will require that the respective responsibilities and principal details of each project for which cosponsorship has been approved be set forth in a cosponsorship contract signed by all cosponsors.

(b) *Use of logo.* Cosponsors shall be authorized to use the National Bicentennial Logo solely in connection with the project for which the Commission is a cosponsor. Such use shall include the legend, "Cosponsored by the Commission on the Bicentennial of the United States Constitution." A cosponsored project shall also be considered an Officially Recognized Project (see below).

(c) *Qualification criteria.* For a project to qualify for Commission cosponsorship the Commission must determine that (1) the project will make an exceptional contribution to advancing the national commemoration; (2) the project will increase public understanding and appreciation of the Constitution; (3) the cost to the Commission, if any, is reasonable in relation to what the project will accomplish; and, (4) the project will be adequately financed and directed.

[51 FR 36786, Oct. 15, 1986, as amended at 53 FR 27519, July 21, 1988]

§ 2001.35 Officially recognized projects.

(a) *Recognition requirements.* (1) The Commission shall grant Official Recognition to projects of exceptional merit with regional, national, or international significance. To be considered for Official Recognition, such projects must have substantial educational and historical value in relation to the U.S. Constitution and must be adequately financed and directed.

(2) Projects which are undertaken in honor of the Constitution and its bicentennial and which otherwise meet the project recognition requirements of this section, but are not in substance directly related to the Constitution, may also be considered by this Commission for Official Recognition.

(b) *Implementation.* Responsibility to develop and implement an Officially Recognized Project lies with the project's sponsor or sponsors. To the extent feasible the Commission shall monitor all Officially Recognized Projects.

(c) *Certificates of recognition.* Projects granted Official Recognition shall receive a Certificate of Official Recognition and such other symbolic recognition as may be approved by the Commission.

(d) *Use of logo.* Sponsors of Officially Recognized Projects are authorized to use the National Bicentennial Logo solely in connection with the recognized project. Such use shall include the legend, "Officially Recognized by the Commission on the Bicentennial of the United States Constitution."

(e) *Federal agency projects.* To obtain Official Recognition, projects and programs sponsored by Federal agencies shall meet the recognition requirements of paragraph (a) of this § 2001.35. They are also subject to the other provisions of this section and to the application requirements of these regulations. The term Federal agencies is defined to include all agencies, departments, offices and other organizations and establishments of the U.S. Government, including those of the executive, the legislative and the judicial branches of Government. A specially designed application form for Federal agencies is available from the Commission.

(f) *Nonprofit organization programs.* (1) Upon written request the Commission may grant Official Recognition to bicentennial programs and projects of nonprofit organizations of regional, national or international scope. Such organizations must have created on their agenda one or more activities designed to honor and commemorate the United States Constitution, but not a project or projects of such exceptional merit or size as to warrant an application for Official Recognition under paragraph (a) of this § 2001.35.

(2) Qualifying programs and projects of nonprofit organizations may be granted Official Recognition singly or en bloc as deemed appropriate by the Commission. No particular form is required for submission of a written request but it should contain all pertinent information including, but not limited to, the following:

Identification and background description of applicant, including address and telephone number; a clear and concise description of the bicentennial program, project or activities; name of the responsible official; information as to timing, budget, source of funds and other relevant information. The Commission reserves the right to request further information.

§ 2001.36 State bicentennial commissions.

(a) *Recognition.* The Commission shall recognize any bicentennial organization as a State Bicentennial Commission upon the request of the Governor or the legislature of a state, or upon the request of the chief executive in the case of the District of Columbia, the Commonwealth of Puerto Rico, and the territories of American Samoa, Guam, and the Virgin Islands. A State Bicentennial Commission, so recognized, shall qualify as a state advisory commission under section 6(d) of Pub. L. 98-101, 97 Stat. 722. This Commission is authorized to delegate authority to such state advisory commissions to assist the Commission in carrying out its purposes.

(b) *Use of Logo.* Recognized state bicentennial commissions are authorized to use and to grant use of the National Bicentennial Logo. Permission to use the Logo may be granted only to nonprofit organizations which are sponsors of projects officially recognized by a state commission as a part of a state bicentennial program, provided such sponsors have been advised in writing by the state commission of such recognition. In order to grant use of the Logo, the state commission shall determine in advance that the project will increase public understanding and appreciation of the U.S. Constitution, and that it will be adequately financed and directed.

(c) *Nonprofit organizations.* Nonprofit organizations which are sponsors of state-recognized projects may be authorized to use the National Bicentennial Logo solely in connection with the recognized project. Such use shall include the legend, "Recognized by the [Name of State Bicentennial Commission]."

(d) *Monitoring responsibility.* A state commission which grants use of the National Bicentennial Logo shall be responsible for monitoring such use to assure that it is consistent with the requirements of this Commission and with the letter and spirit of Pub. L. 98-101, 97 Stat. 719, and any amendments thereto.

§ 2001.37 Designated bicentennial communities.

(a) *Definitions.* The Commission encourages local governing bodies to establish Bicentennial Communities. The term "community" includes all political subdivisions having an elected government, such as a city, county, town, village, township, borough, any Native American tribe or reservation, or any combination thereof. Unincorporated areas which have an established identity of their own may also apply for designation through any representative organization satisfactory to the Commission or a state bicentennial commission.

(b) *Qualification criteria.* A Designated Bicentennial Community is one which (1) has established a bicentennial committee broadly representative of the community; (2) has developed a commemorative program that will educate its residents about the meaning and significance of the Constitution; and, (3) has received an official designation from the Commission.

(c) *Application process.* (1) To be considered as a Designated Bicentennial Community, a community should submit a completed application form to its State bicentennial commission. Upon approval by the State commission, the application with the State commission's recommendation shall be sent to this Commission for its review and decision. (See Subpart D—Selection Process, below.)

(2) The Commission shall issue a Certificate of Designation to all communities whose applications are approved by the Commission or its Staff Director. In the absence of a recognized State bicentennial commission, official recognition may be granted through submission of a completed application directly to this Commission where it will be reviewed and, if approved by the Commission's Staff Director, shall be granted.

(d) *Use of logo.* Designated bicentennial communities are authorized to grant use of the National Bicentennial Logo to nonprofit organizations which are sponsors of projects officially recognized by the designated community's bicentennial committee as part of the community bicentennial program, provided the sponsors have been advised in writing by the local bicentennial committee of such recognition.

(e) *Nonprofit organizations.* Organization sponsors of community-recognized projects are authorized to use the National Bicentennial Logo only in connection with the recognized project. Such use shall include the legend, "Recognized by [Name of Community], a Bicentennial Community."

(f) *Monitoring responsibility.* A Designated Bicentennial Community which grants use of the National Bicentennial Logo shall be responsible for monitoring such use to assure that it is consistent with the requirements of this Commission and with the letter and spirit of Pub. L. 98-101, 97 Stat. 719, and any amendments thereto.

§ 2001.38 Bicentennial defense communities.

(a) *Purposes.* (1) In cooperation with the Department of Defense, the Commission encourages the commanders, leaders and governing staffs of defense installations within the United States and overseas to establish bicentennial defense communities. A principal purpose of authorizing bicentennial defense communities is to encourage servicemen and women and their families to participate in activities that will foster awareness, knowledge, and appreciation of the principles and history of the Constitution of the United States, the founding of the Federal Government and the Bill of Rights.

(2) A further purpose is to encourage cooperation between defense installations and neighboring communities in the commemoration of the bicentennial. This will also provide a means of acknowledging the far-reaching support for the Constitution's bicentennial which has been demonstrated through the Defense Department.

(b) *Definitions.* (1) The term "defense community" may include all of the installations within the jurisdiction of the Department of Defense which that Department considers to have numerical capacity and inherent characteristics of a cohesive community of servicemen and women and service families. This may include but is not limited to established forts, camps, air bases, naval stations, yards and bases, ships at sea, research facilities, academies, schools, training centers and similar installations.

(2) The term "within the United States" includes the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories of American Samoa, Guam and the Virgin Islands. "Overseas" refers to all installations which are not within the United States.

(c) *Qualification criteria.* A bicentennial defense community is one which:

(1) Has established or is in process of establishing a bicentennial committee broadly representative of a community of servicemen and women and service families, encompassed by the boundaries of an established defense installation and its environs;

(2) Has developed or is developing a commemorative program or plan to educate members of a defense community about the origins, meaning, and significance of the United States Constitution; and

(3) Has been certified in the Defense Department and received an official designation from the Commission.

(d) *Application process.* (1) To be designated as a bicentennial defense community, a defense installation shall first submit a completed application form prepared by and transmitted to the office within the Department of Defense which has been designated by the Secretary of Defense to receive such applications under paragraph (d)(3) of this section. Upon review by the appropriate Department of Defense office, the application shall be sent with a certification from the Defense Department to this Commission for its approval and official designation.

(2) The certification from the Department of Defense shall be accepted by the Commission as conclusive evidence that the application of a defense installation meets the definition requirements for a bicentennial defense community set forth under paragraph (a) of this section.

(3) The application form used by the Defense Department shall conform as nearly as possible to the format set forth in Appendix C to these regulations. Applications should include basic data on the defense installation's community, location and boundaries; identification of the installation commander and its bicentennial comm
tee; and a brief statement as to how
commemorative program or plans
educate the applicant defense comm
nity about the meaning and sign
cance of the Constitution. Appli
tions should be sent to the follow
addresses:

Army: Chief of Public Affairs, AT
SAPA-CR, Washington, DC 20310-1508
Navy: Chief of Information (01-51), N
Department, Washington, DC 20350-1
Air force: Office of Public Affairs, AT
SAF/PAC (Bicentennial), Community
lations Division, Washington, DC 203
1000.
Marines: Headquarters, Marine Corps, C
PA (Bicentennial), Washington,
20380-0001.
Coast Guard: Headquarters, Command
United States Coast Guard, ATTN:
BPA (Bicentennial), 2100 Second St
SW., Washington, DC 20593-0001.
Department of Defense: Department of
fense, Bicentennial Office, ATTN: SA
The Pentagon, Room 3E522, Washing
DC 20310-0107.

(4) Upon approval and designat
of a bicentennial defense commun
within the United States, a notif
tion will be sent by the Commission
the appropriate State Bicentenn
Commission. This notice shall cont
a description of the newly approved
centennial defense community, incl
ing the names and title of the defe
installation commander and the ch
man of its bicentennial committee.
similar notice shall be sent by
Commission to any nearby designat
bicentennial community which has
ceived approval under § 2001.37.

(e) *Use of logo.* (1) Bicentennial
fense communities are authorized
use and to grant use of the Natio
Bicentennial Logo without charge
all informational, educational, me
and publication purposes which
assist the installation's bicentenn
committee in efforts to educate
members of its community about
origins, meaning, and significance
the Constitution.

(2) In addition, use of the logo m
be granted without charge to nonpr
it organizations which are sponsors
projects officially recognized by
installation's bicentennial committ
Organization sponsors of such rec
nized projects, subject to the limi

tion of paragraph (e)(3) of this section, are authorized to use the logo only in connection with the recognized project. Such use shall include the legend, "Recognized by [Name of installation] a Bicentennial Defense Community.".

(3) Within the United States, a use of the logo granted to a nonprofit organization shall be limited to the boundaries of a defense installation unless the nonprofit organization is part of a cooperative or joint commemorative program of a nearby designated bicentennial community.

(4) No use, sale, reproduction, manufacture, distribution or license of the logo may be granted to any profit-motivated person or organization without the express written permission of this Commission.

(f) *Responsibilities.* A bicentennial defense community shall be responsible for developing and carrying out activities and programs to honor the United States Constitution, the establishment of the Federal Government and the passage of the Bill of Rights. Specific programs recognized by a bicentennial defense community should be reported through the Department of Defense to the Commission so that they may be recorded in the National Register of Bicentennial Projects maintained by the Commission. A bicentennial defense community shall also monitor the use of the National Bicentennial Logo to assure that such use is consistent with the requirements of the Commission under Pub. L. 98-101, as amended, and these regulations.

(g) *Recognition.* Designated bicentennial defense communities shall be authorized to fly a bicentennial flag carrying the National Bicentennial Logo, to be displayed at appropriate places and times as determined by bicentennial committees and installation commanders. Each bicentennial defense community shall also receive a Certificate of Designation and such other forms of symbolic recognition as may be approved by the Commission or the Department of Defense.

[52 FR 22647, June 15, 1987]

§ 2001.39 Bicentennial campuses.

(a) *Purposes.* The Commission wishes to encourage students, faculties, and staffs of colleges and universities to develop and implement programs, projects and activities to commemorate the bicentennial of the Constitution of the United States, the founding of the Federal Government, and the Bill of Rights. The following regulations are designed to assist State Bicentennial Commissions and Designated Bicentennial Communities, and should expedite procedures and expand opportunities for colleges and universities to achieve recognition for their bicentennial efforts.

(b) *Definitions.* The Commission encourages post-secondary institutions of higher learning to establish Bicentennial Campuses. The term "institution of higher learning" may include both two- and four-year colleges and universities., Vocational or technical institutes are not included unless they are part of an institution of higher learning. Branch campuses which have separate locations and an established identity of their own, and which otherwise meet the criteria set forth below, may also apply for designation. The term "campus" means the administrative, educational, recreational and related buildings of a college or university and the lands surrounding and contiguous thereto, as defined by the policies and rules of the institution.

(c) *Qualification criteria.* A Bicentennial Campus is a campus which,

(1) Has established a bicentennial committee broadly representative of the campus community, including faculty, students, administration, and support staff;

(2) Has developed or is developing a commemorative program for the years 1987-1991 to educate members of the campus community about the origins, meaning and significance of the United States Constitution and the Bill of Rights; and

(3) Has received an official designation from the Commission.

(d) *Application process.* (1) To be considered as a Bicentennial Campus, an institution shall submit a completed application form to its State Bicentennial Commission. (See Appendix

E.) This application shall be signed by the chief administrative officer of the institution. Upon approval by the State commission, the application with the State commission's recommendation shall be sent to this Commission for its review and decision. In the absence of a recognized State bicentennial commission, official recognition may be granted through submission of a completed application directly to this Commission where it will be reviewed and, if approved by the Commission's Staff Director, shall be granted.

(2) The Commission shall prepare, publish, and supply the required applicaton forms (Appendix E) and shall issue a Certificate of Designation to all institutions whose applications are approved by the Commission or its Staff Director.

(3) When a proposed Bicentennial Campus is located within the boundaries or environs of a Designated Bicentennial Community, the State Bicentennial Commission shall request a concurrence from the Designated Bicentennial Community and shall record this consent on the application.

(4) Upon approval and designation of a Bicentennial Campus, a notification shall be sent by the Commission to the appropriate State Bicentennial Commission. This notice shall contain a description of the newly approved Bicentennial Campus, including the names and titles of the chief administrative officer of the institution and the chairman of its bicentennial committee. A similar notice shall be sent by the Commission to any Designated Bicentennial Community in or near the institution.

(e) *Use of Logo.* (1) A bicentennial committee of a certified Bicentennial Campus is authorized without charge:

(i) To use the National Bicentennial Logo on its stationery, publications, displays and program materials, provided the legend "[Name of institution], a Bicentennial Campus" is printed in close proximity to it; and

(ii) To grant use of the National Bicentennial Logo for all informational, educational, media, publication, and public awareness purposes which will assist the institution's bicentennial committee in its efforts to involve
members of the campus communit
its programs. Use of the logo is
thorized only for programs initia
and carried out, to the fullest ext
possible, within the boundaries o
Bicentennial Campus.

(2) This includes granting use of
logo to campus organizations wh
have programs officially approved
recognized in writing by the bicent
nial committee. Such use shall incl
the legend "Recognized by [Name
institutional], a Bicenten
Campus."

(3) No use, sale, reproduction, ma
facture, distribution, or license of
logo may be granted to any profit-
tivated person or organization with
the express written permission of
Commission.

(f) *Responsibilities.* A Bicentenn
Campus shall be responsible for de
oping and carrying out activities
programs to honor the United Sta
Constitution, the establishment of
Federal Government, and the ratifi
tion of the Bill of Rights. Such p
grams should continue during
entire period of commemorati
ending in 1991. Specific programs
ognized by an institution's bicent
nial committee should be reported
the Designated Bicentennial Com
nity (where applicable), the State
centennial Commission, and to
Commission so that they may be
corded in the National Register of
centennial Projects maintained by
Commission. A Bicentennial Cam
shall also monitor the use of the
tional Bicentennial Logo to ass
that such use is consistent with the
quirements of the Commission un
Pub. L. 98-101, as amended, and th
regulations.

(g) *Recognition.* Bicentennial C
puses shall receive a Certificate
Designation and such other forms
symbolic recognition as may be
proved by the Commission. A Bic
tennial Campus shall be authorized
fly a National Bicentennial Logo
with the institution name imprin
above the Logo and the words "Bic
tennial Campus" beneath it.

(Approved by the Office of Managem
and Budget under control number 3
0017)

[52 FR 22648, June 15, 1987]

Subpart D—Selection Process

§ 2001.40 Submission of applications.

To apply for Cosponsorship or Official Recognition of a project, or for a Designated Bicentennial Community, sponsors and applicants must complete a Commission application form and submit it together with all required materials to: Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC. 20503. Copies of application forms may be obtained from the Commission.

§ 2001.41 Application requirements.

(a) Project applications should include a comprehensive description of the project and a narrative statement indicating how the project meets the criteria established by the Commission, as provided on the application form. The application shall include a statement that the applicant agrees to be bound by all policies, requirements, regulations and other decisions made by the Commission affecting the applicant's project and responsibilities. (See Appendix B for sample form.)

(b) Applications for designation as a bicentennial community should include basic data on the community, identification of the community bicentennial committee and a brief statement as to how its commemorative program and plans will educate residents about the meaning and significance of the Constitution. (See Appendix C for sample form.)

§ 2001.42 Evaluation.

The Commission staff shall evaluate all requests for cosponsorship or official recognition, and for designation as a bicentennial community, and shall prepare recommendations for action thereon. The Commission shall be informed of all applications for cosponsorship or official recognition and of all requests for recognition of state bicentennial commissions and designated bicentennial communities.

§ 2001.43 State commission approval.

(a) Approval of the appropriate state bicentennial commission shall be required if a project which meets the recognition requirements under § 2001.35(a) of these regulations is to be conducted or carried out within a single state. In the absence of an officially recognized state bicentennial commission, a project application shall be processed by this Commission without such approval.

(b) If a project is not of regional, national, or international significance so as to meet the recognition requirements under § 2001.35(a) of these regulations, and it is to be conducted or carried out within a single state, the project application should be submitted to and approved by the appropriate bicentennial community or state bicentennial commission. If neither exists, the application may be sent directly to this Commission.

§ 2001.44 Letter of encouragement.

The Commission may issue a letter of encouragement when a project demonstrates outstanding merit but has not yet reached that stage of development or obtained that level of support which would provide reasonable assurance of implementation. This letter does not authorize use of the National Bicentennial Logo.

§ 2001.45 Commission approval.

Commission approval of an application shall be in writing and shall result in the issuance of a letter of agreement to cosponsorship or a certificate of official recognition, or a certificate of designation establishing a bicentennial community.

Subpart E—Coordination and Information

§ 2001.50 National register of bicentennial projects.

(a) As a means of coordination, and to enable the Commission to provide information and advisory assistance to all interested individuals and groups, the Commission shall maintain a National Register of Bicentennial Projects.

(b) This Register shall include all those projects, activities, and programs in which the Commission has involved itself. These may also be publicized by inclusion in commemorative calendars and schedules of bicentennial events published by the Commission.

(c) Within the limits of Commission resources, and to the extent feasible, the National Register shall be expanded to include officially recognized bicentennial projects approved and reported to the Commission by state bicentennial commissions and bicentennial communities.

Appendix A to Part 2001—National Bicentennial Logo

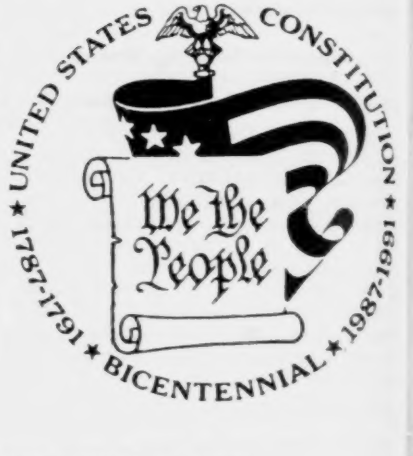
This appendix is intended to improve the utility of Part 2001 by setting forth a depiction of the National Bicentennial Logo, criteria for its use and a detailed description. The Logo was designed and adopted by the Commission under authority of section 5(j), Pub. L. 98-101, as amended, as the official emblem of the bicentennial. As such, it is the subject of Subpart B of these regulations and it has been registered as a trademark of the Commission. Copies may be obtained from the Commission. This Appendix does not amend or affect existing portions of CFR text, nor does it introduce new requirements or restrictions into the regulations of the Commission.

Criteria for Use

The Logo must always be reproduced in its entirety as adopted by the Commission and depicted below. It may not be altered nor may it be overprinted with any legends, symbols or markings. When used by State Bicentennial Commissions, Designated Bicentennial Communities, nonprofit organizations, officially recognized project sponsors and other users, the Logo must bear a legend beneath it that reflects authorization for use.

Description of Logo

In color the Logo is intended to appear on a white or light-colored field. The canton of the American flag is dark blue and the stripes are bright red. The scroll lettering and borders are in gold; the eagle and flag staff are in gold. The circular lettering and dates are in dark blue. When printed in color, the following PMS color designations must be used: Gold, PMS 873C; Red, PMS 199C; Blue, PMS 281C. The Logo may also be duplicated wholly in black or dark blue on a light or white field.



[52 FR 2386, Jan. 21, 1987]

Appendix B to Part 2001—Application for Project Recognition

This appendix is intended to improve the utility of Part 2001 by setting forth a sample application form as a guide for use in applying to the Commission for cosponsorship or official recognition of a bicentennial project. It does not amend or affect existing portions of the CFR text, nor does it introduce new requirements or restrictions into the regulations of the Commission. Copies are available from the Commission.

The expectation of the Commission is that this sample application form will be used as a guide for all project recognition or cosponsorship applications. Applicants should modify informational requirements as may be necessary for particular projects or activities. As a general matter, however, information requested on the form below will be required by the Commission for its evaluation process prior to granting official recognition of a commemorative project.

Note to Applicants

It is not required, but it will be helpful in expediting review by the Commission for applicants to transmit three (3) copies of their Application (the original and two copies). To the extent practicable, it will be appreciated if the Application and accompanying papers are printed or typed on 8½"x 11" pages, one-side only.

Commission File No. ——————

APPLICATION FOR OFFICIAL RECOGNITION BY THE COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

(Please type or print)

Date of Application.

I. Identification

1. Name of sponsor (individual, organization, or agency).
2. Address of sponsor.
3. Sponsor's telephone number.
4. Name of project for which recognition is sought.
5. Name of project director.
6. Address and telephone No. (if different from sponsor).

II. General Background Information (attach separate sheet)

1. Brief identification and history of the sponsor, including names of the members of the Board of Directors or other leadership body of the sponsoring organization, relevant background of principal organization's personnel, and description of sponsor's previous experience, if any, with this type of project.

Please indicate who will be responsible for the operation of the project and in what capacity they will be so responsible. Please attach resumes of director and co-director or equivalents. If sponsor is a nonprofit 501(c)(3) organization, please attach IRS verification.

2. A summary of the operations and programs of the sponsoring organization during the year immediately preceding the date of this application, including income and budget data. (Not applicable to newly formed organizations.)

3. Please attach copies of significant or representative endorsements of the project by individuals and governmental, business, community, service, academic, Bicentennial, or other organizations.

III. Project Description (attach additional sheets)

1. Provide a brief (no more than one typewritten page) description of the project for which recognition is sought.

2. Attach a comprehensive description of the project in narrative form, including the ways in which the project will be carried out, dates at which significant milestones will be reached, the approximate number and background of probable participants and/or audience, and any other information relevant to the successful conduct of the project. Also, please indicate how the project meets the regulatory criteria established by the Commission on the Bicentennial of the U.S. Constitution (45 CFR Part 2001).

IV. Timing and Budget Information

1. Please state the beginning and ending dates of the project. If specific dates are not yet determined, please state the criteria that will determine the duration of the project.

——————————————————

Period of major emphasis: ——————— ——

2. Total actual or estimated cost of project:

$ ——————————————————

Actual ——— Estimated ———

3. Total funds available (Do not include funds committed but not yet received):

$ ——————————————————

4. Please indicate the sources of funds included in number 3 above:

	Amount
Federal	
State	
Local government	
Corporate	
Foundation grants	
Other	

Please indicate below the government agencies and programs, if any, from which funds have been received and, if you choose to do so, the names of corporations and foundations that have provided funds.

——————————————————

5. Please indicate by source the amount of required funds not currently available for the project but that are committed or otherwise anticipated. Please indicate the status of any pending applications or requests, including approximate time receipt of funds is expected.

	Amount	Status
Federal		
State		
Local government		
Corporation		
Foundation grants		
Other		

If you choose to do so, please indicate the agencies, corporations, foundations, or other sources of anticipated funds.

——————————————————

6. Briefly describe the system of supervision of funds that will be employed for this project.

——————————————————

The signature below attests to the applicant's agreement to be bound by all policies, requirements, regulations, and other decisions that have been made, or will be made, by the Commission on the Bicentennial of the United States Constitution affecting the applicant's project and responsibilities.

Signature of Responsible Officer: ____________________

____

Title: ____________________

Date signed: ____________________

Note to Applicants: It is not required, but it will be helpful to the Commission, for applicants to transmit three (3) copies of their Application together with the original. Also, to the fullest extent practicable, it will be appreciated if the Application and accompanying papers are printed or typed on 8½" x 11" pages, one-sided only.

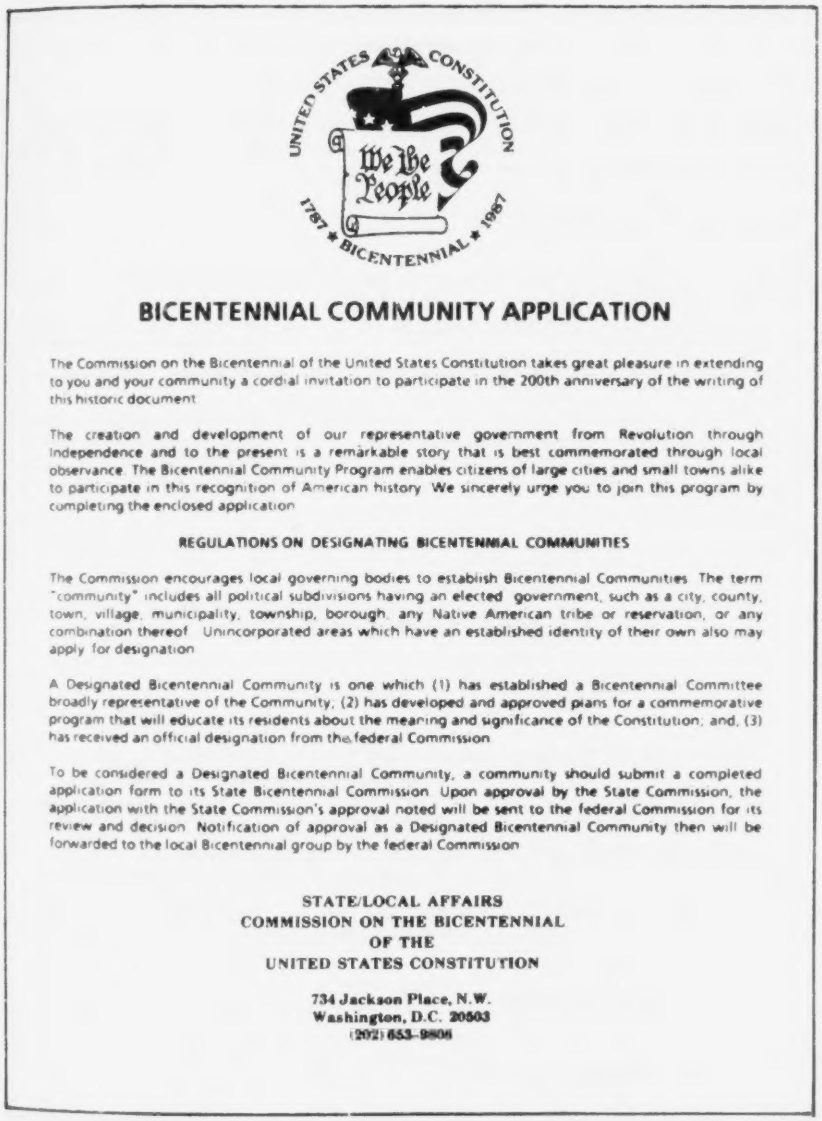
Please send to:

Commission on the Bicentennial of the United States Constitution, Plans and Project Recognition, 734 Jackson Place, NW., Washington, DC 20503.

APPENDIX C TO PART 2001—BICENTENNIAL COMMUNITY APPLICATION

This appendix is intended to improve the utility of Part 2001 by setting forth a sample application form for use by governing bodies and representative co nity organizations in applying to the mission for official recognition and de tion as a Bicentennial Community. Th pendix does not amend or affect ex portions of CFR text, nor does it int new requirements or restrictions in regulations of the Commission.

The expectation of the Commiss that this form or a facsimile thereof used by community groups and local g ing bodies for all Bicentennial Comm applications. Applicants may find it sary to modify or add to the basic in tion requested on this form. As a matter, however, this information quired by the Commission for its revi approval process. Copies of the fo available from the Commission.



BICENTENNIAL COMMUNITY APPLICATION

The Commission on the Bicentennial of the United States Constitution takes great pleasure in extending to you and your community a cordial invitation to participate in the 200th anniversary of the writing of this historic document.

The creation and development of our representative government from Revolution through Independence and to the present is a remarkable story that is best commemorated through local observance. The Bicentennial Community Program enables citizens of large cities and small towns alike to participate in this recognition of American history. We sincerely urge you to join this program by completing the enclosed application.

REGULATIONS ON DESIGNATING BICENTENNIAL COMMUNITIES

The Commission encourages local governing bodies to establish Bicentennial Communities. The term "community" includes all political subdivisions having an elected government, such as a city, county, town, village, municipality, township, borough, any Native American tribe or reservation, or any combination thereof. Unincorporated areas which have an established identity of their own also may apply for designation.

A Designated Bicentennial Community is one which (1) has established a Bicentennial Committee broadly representative of the Community; (2) has developed and approved plans for a commemorative program that will educate its residents about the meaning and significance of the Constitution; and, (3) has received an official designation from the federal Commission.

To be considered a Designated Bicentennial Community, a community should submit a completed application form to its State Bicentennial Commission. Upon approval by the State Commission, the application with the State Commission's approval noted will be sent to the federal Commission for its review and decision. Notification of approval as a Designated Bicentennial Community then will be forwarded to the local Bicentennial group by the federal Commission.

STATE/LOCAL AFFAIRS
COMMISSION ON THE BICENTENNIAL
OF THE
UNITED STATES CONSTITUTION

734 Jackson Place, N.W.
Washington, D.C. 20503
(202) 653-9800

Basic Data

(Please Type or Print)

DATE OF APPLICATION

NAME OF COMMUNITY

TYPE (*city, county, etc.*)

POPULATION

STATE

COUNTY

COUNTY SEAT

MAILING ADDRESS (*include zip*)

OFFICIAL NAME OF BICENTENNIAL GROUP

LOCAL BICENTENNIAL CHAIRPERSON

PHONE NUMBER (*include area code*)

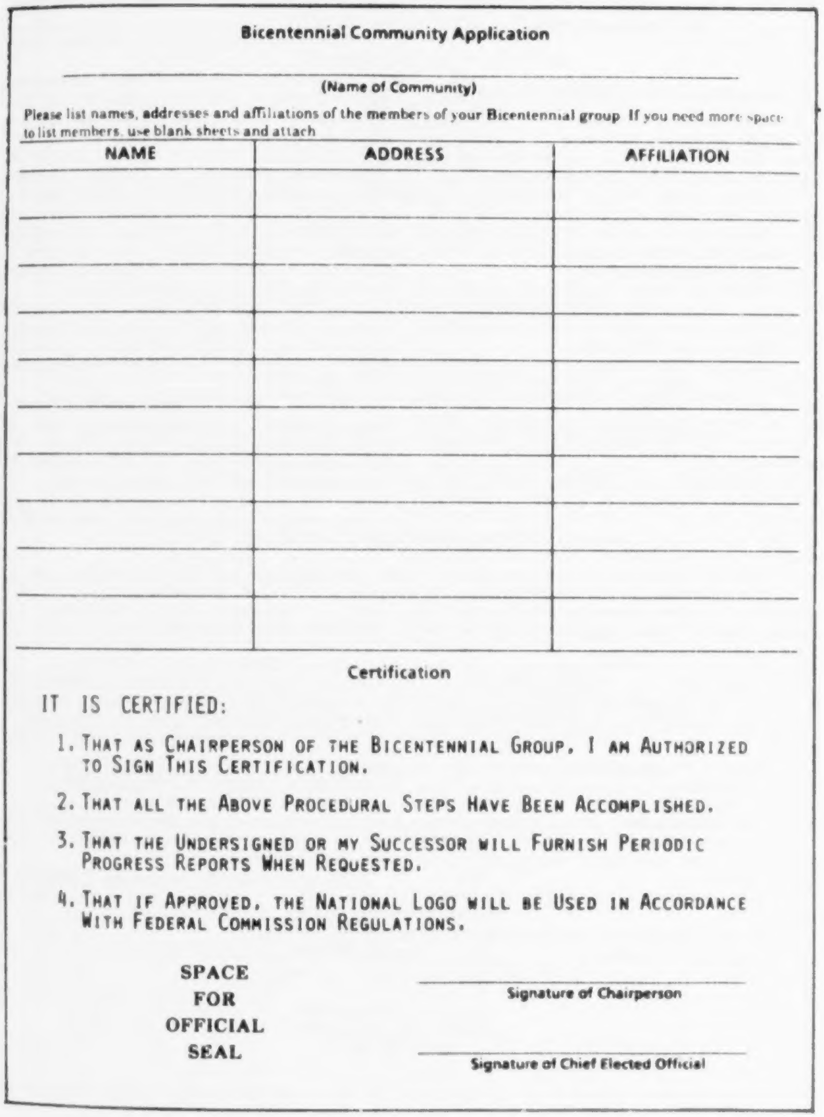
MAILING ADDRESS (*include zip*)

NAME OF CHIEF ELECTED LOCAL OFFICIAL

PHONE NUMBER (*include area code*)

MAILING ADDRESS (*include zip*)

Brief Outline of Bicentennial Plans



Bicentennial Community Application

____
(Name of Community)

Please list names, addresses and affiliations of the members of your Bicentennial group. If you need more space to list members, use blank sheets and attach

NAME	ADDRESS	AFFILIATION

Certification

IT IS CERTIFIED:

1. That as Chairperson of the Bicentennial Group, I am Authorized to Sign This Certification.
2. That all the Above Procedural Steps Have Been Accomplished.
3. That the Undersigned or my Successor will Furnish Periodic Progress Reports When Requested.
4. That if Approved, the National Logo will be Used in Accordance With Federal Commission Regulations.

SPACE
FOR
OFFICIAL
SEAL

____
Signature of Chairperson

____
Signature of Chief Elected Official

APPENDIX D TO PART 2001—Application for Logo License

COMMERCIAL LOGO LICENSE APPLICATION

An application for commercial use of the National Bicentennial Logo in connection with the marketing of goods or services shall consist of the following sections:

1. *Cover page.* Name, address, phone number, and state of incorporation of applicant. Name of the person with authority to negotiate and enter into a binding contract. Date application submitted.

2. *Product schedule.* Complete a separate Product Standards and Specifications Schedule for each good or service submitted for consideration. (See below.)

3. *Statement of commemorative benefit.* Explain the particular commemorative significance or educational value of your product or service. Discuss any anticipated benefit related to the observance of the bicentennial.

4. *Marketing plan.* Discuss the intended distribution or market of the good or service involved. Provide an estimate of the number of customers and a time schedule for production and distribution of the product/development and availability of the service.

5. *Royalty proposal.* Attach a proposal for royalties or other fees to be paid to the Commission. If you request a waiver of royalties and other fees, please submit a justification statement explaining the basis for your request and how the grant of such a waiver would further the purposes of the bicentennial. (Note: Nonprofit educational organizations are exempt from payment of any logo license royalties and other fees to the Commission.)

6. *Supplemental business information.* The Commission will examine your most recent Dun and Bradstreet report. You may provide any supplemental information you desire about:

a. Your business organization and principal officers;

b. Previous business experience with this type of product or service;

c. Financial status and summary
ations; or

d. Endorsements of your compan
products.

7. *Request for exclusive license.* In
the Commission will not grant to
organization an exclusive right to
logo with a particular class of goods
ices. Exceptions may be made, how
circumstances where an exclusive
would assist the Commission in carr
its legislative mandate, or enhance b
nial programs and activities. Appl
for an exclusive license must co
statement explaining the circumstan
porting the request for an exception.

Submit 3 copies of this applicatio
rector of Marketing, Commission on
centennial of the United States C
tion, 736 Jackson Place NW., Wash
DC 20503.

Send one sample of each product
item, mock-up, or comparable go
your product is licensed, the sam
become the property of the Commi
not licensed, it will be returned to yo

The outline of a Product Standa
Specifications Schedule (see parag
above) is set forth below.

Product Standards and Specificat Schedule

A. Name of Product/Service:

B. Description:

C. Sizes/Models/Colors/Options:

D. Manufacturing Specifications/P
ance Evaluation Criteria: Indicate w
the product and each component th
fabricated and assembled in the
States, or its territories or possession

E. Quality Standards and Controls:

F. Warranty or Guarantee:

G. Show that the Product or
meets applicable industry standar
safety requirements.

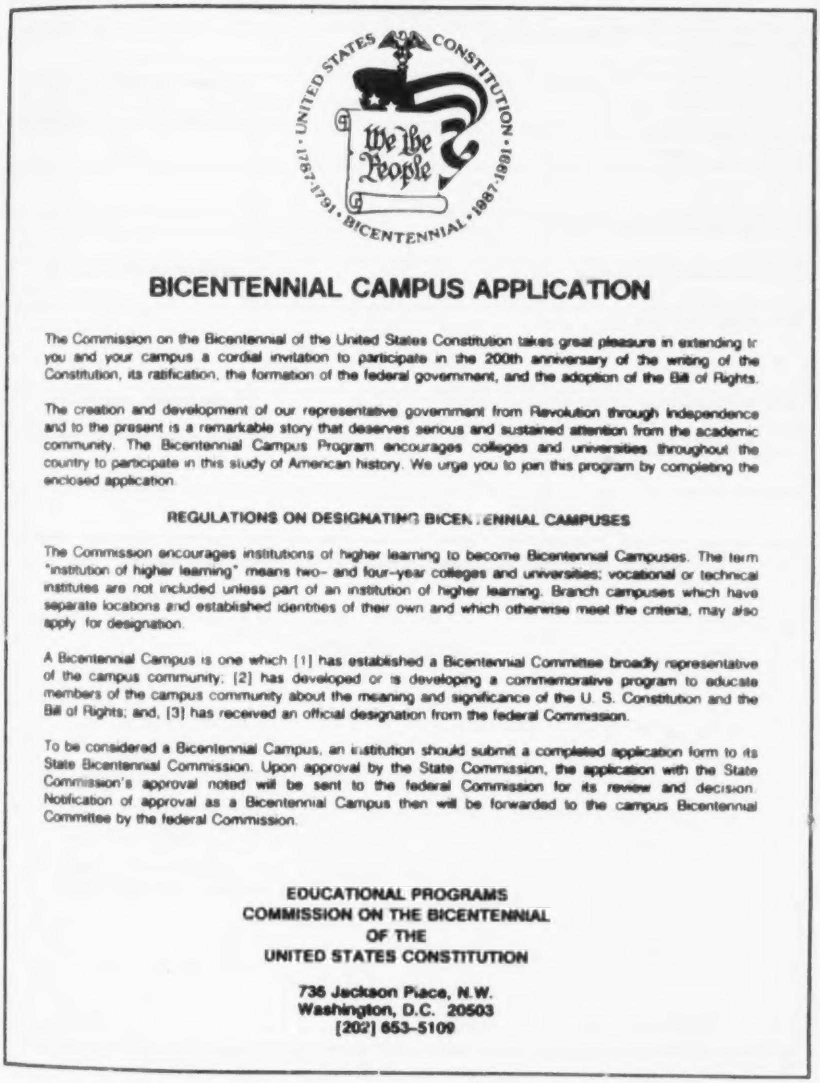
H. Product Liability Insurance Cove

I. Period of Time You Wish to Use

Beginning Date: Ending Date:

[52 FR 2387, Jan. 21, 1987]

APPENDIX E TO PART 2001—BICENTENNIAL CAMPUS APPLICATION



BICENTENNIAL CAMPUS APPLICATION

The Commission on the Bicentennial of the United States Constitution takes great pleasure in extending to you and your campus a cordial invitation to participate in the 200th anniversary of the writing of the Constitution, its ratification, the formation of the federal government, and the adoption of the Bill of Rights.

The creation and development of our representative government from Revolution through Independence and to the present is a remarkable story that deserves serious and sustained attention from the academic community. The Bicentennial Campus Program encourages colleges and universities throughout the country to participate in this study of American history. We urge you to join this program by completing the enclosed application.

REGULATIONS ON DESIGNATING BICENTENNIAL CAMPUSES

The Commission encourages institutions of higher learning to become Bicentennial Campuses. The term "institution of higher learning" means two- and four-year colleges and universities; vocational or technical institutes are not included unless part of an institution of higher learning. Branch campuses which have separate locations and established identities of their own and which otherwise meet the criteria, may also apply for designation.

A Bicentennial Campus is one which [1] has established a Bicentennial Committee broadly representative of the campus community; [2] has developed or is developing a commemorative program to educate members of the campus community about the meaning and significance of the U. S. Constitution and the Bill of Rights; and, [3] has received an official designation from the federal Commission.

To be considered a Bicentennial Campus, an institution should submit a completed application form to its State Bicentennial Commission. Upon approval by the State Commission, the application with the State Commission's approval noted will be sent to the federal Commission for its review and decision. Notification of approval as a Bicentennial Campus then will be forwarded to the campus Bicentennial Committee by the federal Commission.

EDUCATIONAL PROGRAMS
COMMISSION ON THE BICENTENNIAL
OF THE
UNITED STATES CONSTITUTION

736 Jackson Place, N.W.
Washington, D.C. 20503
[202] 653-5109

BASIC DATA

(Please Type or Print)

DATE OF APPLICATION:	NAME OF INSTITUTION:		
TYPE (2-yr., 4-yr., university):	NUMBER OF STUDENTS:	STATE:	CONGRESSIONAL DISTR

MAILING ADDRESS (include zip):

OFFICIAL TITLE OF BICENTENNIAL COMMITTEE:

CAMPUS BICENTENNIAL CHAIRPERSON:	PHONE NUMBER (includ

MAILING ADDRESS (include zip):

NAME OF CHIEF ADMINISTRATIVE OFFICER (President or Chancellor):	PHONE NUMBER (includ

MAILING ADDRESS (include zip):

BRIEF OUTLINE OF BICENTENNIAL PLANS 1987–1991

BICENTENNIAL CAMPUS APPLICATION

____

[Name of Institution]

Please list names, addresses and titles of the members of your Bicentennial committee. If you need more space to list members, use blank sheets and attach.

NAME	ADDRESS	TITLE

CERTIFICATION

IT IS CERTIFIED:

1. THAT AS CHAIRPERSON OF THE BICENTENNIAL COMMITTEE, I AM AUTHORIZED TO SIGN THIS CERTIFICATION.
2. THAT ALL THE ABOVE PROCEDURAL STEPS HAVE BEEN ACCOMPLISHED.
3. THAT THE UNDERSIGNED OR MY SUCCESSOR WILL FURNISH PERIODIC PROGRESS REPORTS WHEN REQUESTED.
4. THAT IF APPROVED, THE NATIONAL LOGO WILL BE USED IN ACCORDANCE WITH FEDERAL COMMISSION REGULATIONS.

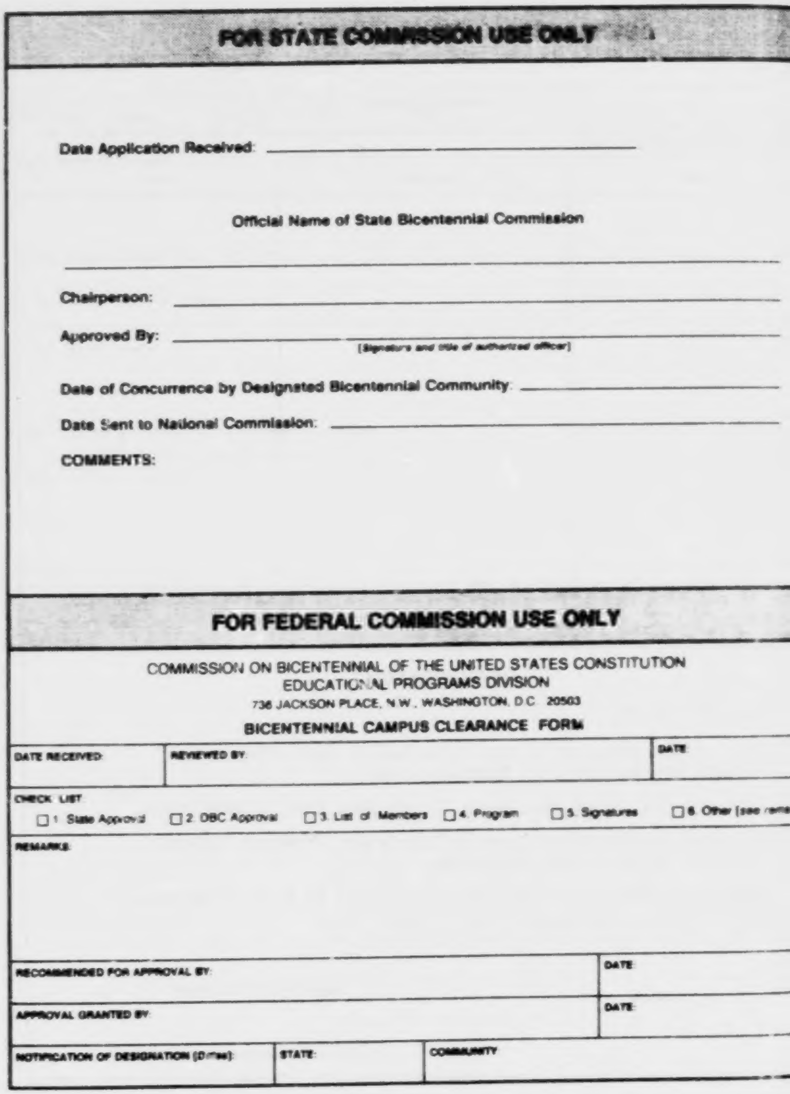
SEAL

____

Signature of Chairperson

____

Signature of Chief Administrative Officer



FOR STATE COMMISSION USE ONLY

Date Application Received: ______________________

Official Name of State Bicentennial Commission

____

Chairperson: ______________________

Approved By: ______________________
[Signature and title of authorized officer]

Date of Concurrence by Designated Bicentennial Community: ______________________

Date Sent to National Commission: ______________________

COMMENTS:

FOR FEDERAL COMMISSION USE ONLY

COMMISSION ON BICENTENNIAL OF THE UNITED STATES CONSTITUTION
EDUCATIONAL PROGRAMS DIVISION
736 JACKSON PLACE, N.W., WASHINGTON, D.C. 20503

BICENTENNIAL CAMPUS CLEARANCE FORM

DATE RECEIVED:	REVIEWED BY:	DATE:

CHECK LIST:
☐ 1. State Approval ☐ 2. DBC Approval ☐ 3. List of Members ☐ 4. Program ☐ 5. Signatures ☐ 6. Other [see rem

REMARKS:

RECOMMENDED FOR APPROVAL BY:	DATE:
APPROVAL GRANTED BY:	DATE:

NOTIFICATION OF DESIGNATION (Dates):	STATE:	COMMUNITY

[52 FR 22650, June 15, 1987]

PART 2002—REGULATIONS ON DONATIONS

Subpart A—Statement of Policy

Sec.
2002.10 Private sector support.
2002.11 An enduring commemoration.

Subpart B—General Provisions

2002.20 Statutory authority.
2002.21 Limitations.
2002.22 Tax-exempt organizations.

Subpart C—Purpose of Donations

2002.30 General purpose.
2002.31 Specific purposes.

Subpart D—Valuation of Donations

2002.40 Statutory authority.
2002.41 Property.
2002.42 Personal services.
2002.43 Recognition of donors and volunteers.

Subpart E—Committee to Review Donations

2002.50 Appointment.
2002.51 Oversight function.
2002.52 Disposition of donations.

Subpart F—Recording and Reporting

2002.60 Accounting.
2002.61 Reporting.

AUTHORITY: Sec. 5(h)(3) of Pub. L. 98-101; 97 Stat. 719, as amended by Pub. L. 99-549, 100 Stat. 3063; 5 U.S.C. 552.

SOURCE: 51 FR 3174, Jan. 24, 1986 (interm rule), and 51 FR 28384, Aug. 7, 1986 (final rule), unless otherwise noted.

Subpart A—Statement of Policy

§ 2002.10 Private sector support.

(a) In creating the Commission, Congress enacted legislation which recognizes a leading role for the private sector in the bicentennial commemoration. Private donations of money, property or personal services, therefore, are encouraged by the Commission as a means of stimulating public support for the commemoration of the Constitution's bicentennial.

(b) Funding of Commission activities and projects by private individuals, corporations and tax-exempt organizations is authorized by specific statutory provisions (Pub. L. 98-101; 97 Stat. 721). Congress also intends a continuation of the same tax deductible status for private donations as was accorded donations to the American Revolution Bicentennial Administration.

§ 2002.11 An enduring commemoration.

(a) Donations to the Commission will be employed to the maximum extent feasible on commemoration projects and activities, including a limited number of bicentennial projects to be undertaken by the Commission on behalf of the Federal Government. Private donations will make possible a commemoration of enduring quality, a nationwide re-examination of the common principles which bind the United States together and a rekindling of national pride in the Constitution which embodies these common principles.

(b) The Commission's efforts, funded largely through private sector support, will stress homage to ideas—ideas that have shaped our Nation. Goals of scholarship and education will balance those of ceremony and celebration. Funds from the private sector will help provide an opportunity for all American citizens to learn more about our system of government and its history.

Subpart B—General Provisions

§ 2002.20 Statutory authority.

This regulation is issued in accordance with sec. 5(h) of Pub. L. 98-101, 97 Stat. 721, which provides that:

(a) The Commission is authorized to accept, use, solicit and dispose of donations of money, property, or personal services.

(b) The Commission shall prescribe regulations under which the Commission may accept donations of money, property of personal services.

(c) These regulations shall include procedures for determining the value of donations of property or personal services.

§ 2002.21 Limitations.

(a) Except for donations from tax-exempt organizations, sec. 5(h)(2) of Pub. L. 98-101, 97 Stat. 721, as amended, prohibits the Commission from ac-

best copy available

cepting donations the value of which exceeds:

(1) $250,000 annually, in the case of donations from an individual; or,

(2) $1,000,000 annually, in the case of donations from a corporation, partnership, or other business organization.

(b) "Annually" means during one calendar year.

[51 FR 3174, Jan. 24, 1986 (interim rule), and 51 FR 28384, Aug. 7, 1986 (final rule), as amended at 52 FR 28705, Aug. 3, 1987]

§ 2002.22 Tax-exempt organizations.

(a) Under sec. 5(h)(4) of Pub. L. 98-101, 97 Stat. 721, the limitations set forth in § 2002.21 do not apply in the case of an organization which is:

(1) Described in sec. 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)), and

(2) Exempt from taxation under sec. 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)).

(b) Any donation from a tax-exempt organization where the donation value exceeds $1,000,000 annually from the donor must be accompanied by written evidence from the donor that it is an organization described in sec. 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and that it is exempt from taxation under sec. 501(a) of such Code (26 U.S.C. 501(a)). This evidence of qualification shall be retained in the files of the Commission.

[51 FR 3174, Jan. 24, 1986 (interim rule), and 51 FR 28384, Aug. 7, 1986 (final rule), as amended at 52 FR 28705, Aug. 3, 1987]

Subpart C—Purpose of Donations

§ 2002.30 General purpose.

A donation to the Commission must be for use by the Commission in carrying out the general purpose for which it was established, which is to promote and coordinate activities to commemorate the bicentennial of the Constitution (sec. 3, Pub. L. 98-101; 97 Stat. 719.).

§ 2002.31 Specific purposes.

Within this general purpose, a donation to the Commission may also be given to assist it in accomplishing its specific purposes, including but not limited to the following:

(a) Planning and developing activities appropriate to commemorate the bicentennial of the Constitution, including selected projects to be sponsored by the Commission.

(b) Assisting and encouraging private organizations, and State and local governments to organize and participate in appropriate bicentennial activities.

(c) Coordinating generally public and private bicentennial activities throughout all of the States.

(d) Serving as clearinghouse for the collection and dissemination of information about bicentennial events and plans.

(e) Expanding the personnel of the Commission to enable it to function more effectively.

(f) Providing equipment, facilities, support services or other types of property which will enable the Commission to accomplish its goals more efficiently.

(g) Furnishing the means for the Commission and its staff to travel and sponsor seminars and meetings in various regions of the country.

(h) Encouraging and providing the direction and facilities for volunteers to participate in Commission activities so as to involve the largest possible citizen participation in the bicentennial commemoration.

Subpart D—Valuation of Donations

§ 2002.40 Statutory authority.

Under sec. 5(h)(3) of Pub. L. 98-101, 97 Stat. 721, the Commission is required to prescribe regulations which include procedures for determining the value of donations of property or personal services. These valuation procedures are as follows.

§ 2002.41 Property.

(a) The value of property donated to the Commission, whether real or personal, shall be determined initially by the donor in a written statement filed with the Commission at the time of the donation. This statement shall be submitted to the Commission by the donor in a written document containing the name of the donor, the date and place of the contribution, an accurate description of the property and a valuation by the donor.

(b) Where the donor is unable to determine a precise value, a reasonably based estimate will suffice. In each case the donor shall receive a written receipt for the property containing the name of the donor, the date and location of the contribution and a description of the property including its value as stated by the donor.

(c) Other recordkeeping requirements which may be applicable to donors are set forth in the pertinent sections of income tax regulations published by the Internal Revenue Service at 26 CFR 1.170 A-13.

(d) If for any reason a donor's statement of value is unsatisfactory to the Commission, an alternative method of valuation shall be used by the Commission. This shall be done in accordance with regulations of the Internal Revenue Service published at 26 CFR 1.170 A-13T.

(e) The valuation of property provided to the Commission by donors and accepted for purposes of the Commission's use is not to be considered conclusive upon the Internal Revenue Service or other taxing authorities, or upon other governmental entities.

(f) Donors of property with an aggregate or stated value in excess of $5,000 may fall within substantiation requirements for deductibility under sec. 6050 L of the Tax Reform Act of 1984 (Pub. L. 93-369; 96 Stat. 494), as published by the Internal Revenue Service at 26 CFR 1.170 A-13T. Any questions as to deductibility should be taken up with the Internal Revenue Service.

§ 2002.42 Personal services.

(a) "Personal services" is defined to mean services by persons who are paid to perform a given task or tasks for the benefit of the Commission. This does not include services which are volunteered to the Commission by persons who are not paid, nor does it include provision of advice to the Commission by persons who serve without compensation on an advisory or consulting committee of the Commission.

(b) The value of donated personal services shall be determined by the information as to their costs supplied by the donor at the time of the donation. A donation of personal services is subject to the limitations set forth above in § 2002.21.

(c) A donor of personal services shall be responsible for providing the Commission with a statement or record of the donation showing the name of the donor, the date and place of the donation and a description of the services provided together with their costs or valuation by the donor. Each donor shall receive a receipt for donated services and this receipt may also serve, when appropriate, as the required record of the donation.

§ 2002.43 Recognition of donors and volunteers.

(a) All donors and volunteers of personal services shall receive from the Commission suitable acknowledgment and recognition of their contributions to the bicentennial. Certificates and letters of appreciation will be sent to donors of money, property or personal services.

(b) A National Honor Roll of donors shall be created and maintained bearing the names of all individual donors who make contributions of $10,000 or more in value, and of all corporations, partnerships, businesses, unions and other organizations, including tax exempt organizations, which make contributions of $100,000 or more in value. Suitable emblems, flags or other symbols of recognition shall also be given to such donors at the discretion of the Commission.

(c) The Commission shall keep a record of all volunteers of personal services and persons on this roll shall be recognized with suitable certificates and letters of appreciation and such other symbolic forms of recognition as may be approved by the Commission.

Subpart E—Committee To Review Donations

§ 2002.50 Appointment.

A committee of the Commission shall be appointed by the Chairman to review the propriety of all donations to the Commission together with any legal or other questions relating thereto. The Staff Director shall be responsible for the submission of a report to the committee, quarterly or more often if desired, on all donations or offers to donate money, property or personal services which are valued or estimated to be valued at $10,000 or more.

§ 2002.51 Oversight function.

(a) The review committee shall oversee the operation of the Commission's donation program, including the receipt, utilization and disposition of donated property and personal services and the effectiveness of this regulation on such donations. The committee may refer particular issues to the Chairman or to the Commission for further review, with or without a recommendation.

(b) The committee, the Chairman, or the Commission may direct the staff to return or decline to accept a donation whenever it is determined, for any reason, that the donation is unacceptable.

§ 2002.52 Disposition of donations.

(a) Records and reports of the Commission as to the receipt and utilization of donations of money and personal services shall be sufficient as records of their disposition.

(b) With respect to donations of property, real or personal, the following requirements shall apply:

(1) Property may be sold, exchanged, or otherwise disposed of only if the objective or result of the disposition will further the purposes of the Commission or will aid in the bicentennial commemoration of the Constitution.

(2) The committee to review donations shall be advised of all proposals for disposition of property prior to disposition and, for all such property valued at $1,000 or more, shall provide the Chairman or the Commission with a recommendation as to the proposed disposition.

(3) Approval of the Chairman or the Commission shall be obtained in advance of disposition.

(4) All Internal Revenue Service regulations applicable to donated property sold, exchanged or otherwise disposed of within two years after receipt will be observed. (see 26 CFR 1.6050 L-1T)

Subpart F—Recording and Reporting

§ 2002.60 Accounting.

(a) The Staff Director shall be responsible for establishing accounting procedures for the Commission and appropriate forms to record the receipt, utilization and disposition of all donations of money, property or personal services.

(b) Prior to acceptance, recording and deposit of donated moneys, and prior to acceptance and receipt of property and personal services, the Staff Director or his designee shall ascertain from Commission records whether the donation, singly or cumulatively, would exceed the annual dollar amount limits on the Commission's statutory authority to accept the donation as set forth in § 2002.21. Where these limits would be exceeded, all of the donations or, if divisible, the excessive portion of the donation shall be returned to the donor with an appropriate explanation and expression of appreciation.

§ 2002.61 Reporting.

Reports of all donations of money, property, and personal services, and the value thereof, shall be given to the Chairman and the Commission on a periodic basis as desired. Reports shall also be prepared for use in the Commission's annual report to the President, to each House of the Congress, and to the Judicial Conference of the United States, as required by sec. 6(e) of Pub. L. 98-101, 97 Stat. 719, 722.

PART 2005—DISCLOSURE OF INFORMATION

Subpart A—Purpose and Policies

Sec.

2005.1 Organization of Commission.
2005.2 Statement of policies.
2005.3 Where to make information requests.
2005.4 Applicable laws and regulations.

Subpart B—Commission Responsibilities

2005.10 General Counsel action.
2005.11 Index of records.
2005.12 Fee policy.
2005.13 Interim fee schedule.

Subpart C—How To File Information Requests

2005.20 Form and content of requests.
2005.21 Information not subject to release.

Subpart D—Processing Information Requests

2005.30 Prompt response to requests.
2005.31 Denials.
2005.32 Appeals.
2005.33 Judicial review.

Authority: Pub. L. 98-101 as amended; 5 U.S.C. 552 as amended by secs. 1801-1804 of the omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99-570; 100 Stat. 3207).

Source: 52 FR 5543, Feb. 25, 1987, unless otherwise noted.

Subpart A—Purpose and Policies

§ 2005.1 Organization of Commission.

Information about the organization and functions of the Commission on the Bicentennial of the United States Constitution ("the Commission") can be found in Title 45 Code of Federal Regulations Part 2000 and in Pub. L. 98-101, as amended. The organization and functions rule covering Commission operations was published in the Federal Register as a final rule on February 28, 1986 (51 FR 7220).

§ 2005.2 Statement of policies.

(a) It is the policy of the Commission to make available as soon as possible for public information, inspection and copying, all Commission approved resolutions, statements of policy and other final decisions affecting public programs and activities of the Commission. These include sponsorship and project recognition approvals, logo licenses, and public program decisions of the Chairman, Staff Director, and committees of the Commission when exercising delegated authority of the Commission. Notices and agenda of scheduled Commission meetings shall be announced publicly and the minutes of Commission meetings including records of voting shall be available to the public immediately following review and approval by Commissioners and the Chairman. Any person may examine and copy records listed in this paragraph at the Commission offices in Washington, DC, at reasonable times during normal working hours. Identifying details of any records referred to in this paragraph may be deleted to prevent unwarranted invasion of personal privacy and in any such case the justification for deletion will be fully explained in writing.

(b) Other official records of the Commission shall be available to the fullest extent possible consistent with the terms and policies of the Freedom of Information Act (FOIA), 5 U.S.C. section 552, as amended. On request they will be furnished promptly to any person for inspection and copying as set forth below provided the request reasonably describes such records and otherwise conforms with these regulations.

(c) Information currently furnished to the public in the regular course of official duties may continue to be furnished to the public without complying with this Part, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be inconsistent with this Part.

§ 2005.3 Where to make information requests.

(a) A member of the public may request information and records from the Commission by writing to the General Counsel of the Commission on the Bicentennial of the United States Constitution, Attn: FOIA officer, 736 Jackson Place NW., Washington, DC 20503. Requests for information and supervised access to Commission records may also be made in person at the office of the General Counsel between 9 a.m. and 5:30 p.m. Monday through Friday except holidays. The Office of General Counsel is located at 736 Jackson Place NW., Washington, DC; telephone (202) USA-1787.

(b) Except as provided below in § 2005.11 of this regulation, any request for Commission records made in person shall be submitted in writing form and signed by the requester.

(c) The General Counsel is designated the Freedom of Information Officer for the Commission and is hereby delegated the exclusive authority to act on all requests under FOIA for Commission documents and records.

§ 2005.4 Applicable laws and regulations.

The following laws and regulations are applicable to information requests made under this Part:

(a) The Freedom of Information Act (5 U.S.C. 552);

(b) Sections 1801-1804 of the Freedom of Information Reform Act of 1086 (Pub. L. 99-570; 100 Stat. 3207);

(c) The regulations in this Part 2005 and 45 CFR Part 2000; and

(d) Pub. L. 98-101, as amended by Pub. L. 99-549.

Subpart B—Commission Responsibilities

§ 2005.10 General Counsel action.

The General Counsel or his designee is responsible for ensuring that all Commission programs, activities and personnel comply with the requirements of FOIA and these regulations.

§ 2005.11 Index of records.

(a) The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated by authority of the Commission and which is required to be made available pursuant to 5 U.S.C. 552(a) (1) and (2). Publication of such indices in the FEDERAL REGISTER has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefore made in accordance with § 2005.12.

(b) A copy of the index shall be available at the offices of the Staff Director and General Counsel respectively.

§ 2005.12 Fee policy.

(a) When records are being requested for commercial use, the fee policy of the Commission is to levy reasonable standard charges for document searching, duplication, and review. "Commercial use" is defined to mean use of requested documents for resale, or use for private financial gain.

(b) When records are being requested by representatives of the media, the fee policy of the Commission is to levy reasonable standard charges only for document duplication.

(c) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of the Commission is the levy reasonable standard charges only for document duplication.

(d) For any other request which does not meet the criteria contained in § 2005.12 (a through c), the fee policy of the Commission is to levy reasonable standard changes for document search and duplication.

(e) The Commission may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(f) A fee waiver request shall indicate how the information will be used, to whom it will be provided and whether the requester intends to use the information for resale at a fee above actual cost.

§ 2005.13 Interim fee schedule.

(a) The Freedom of Information Reform Act of 1986 requires that all agencies develop a uniform schedule of fees after the Office of Management and Budget (OMB) develops regulatory guidance designed to help agencies develop uniform fee schedules. Until the OMB fee guidance regulations are developed and the Commission establishes a new uniform fee schedule, the Commission will levy fees according to § 2005.13 (b) and (c).

(b) A fee may be charged for direct costs of document duplication at the rate of $0.15 per page for copying, and for search and review at the rate of

$2.50 per quarter hour for clerical time expended in identifying and locating records. When professional staff must be used to conduct search and reviews, their time will be billed at $5.00 per quarter hour.

(c) Fees for duplication of audio, video, automated tapes and other electronic records will be charged at the actual cost to the Commission.

(d) The Commission may limit the number of copies of any document or record provided to any person.

Subpart C—How To File Information Requests

§ 2005.20 Form and content of requests.

(a) A request for access to official records shall reasonably describe the records requested so that Commission personnel will be able to locate them with a reasonable amount of effort. When possible, specific information regarding project names, dates, titles, file designations, and other data which may help identify the records should be supplied by the requester.

(b) Any request submitted in writing should be clearly identified as a request made pursuant to the Freedom of Information Act by labeling the envelope with the letters FOIA and referring to FOIA in the body of the letter.

§ 2005.21 Information not subject to release.

(a) The provisions of 5 U.S.C. 552 which require that agencies make their official records available for public inspection and copying do not apply to Commission records which are:

(1) Related solely to the internal personnel rules and practices of the Commission;

(2) Specifically exempted from disclosure by statute;

(3) Trade secrets, proprietary material, information which is privileged, and information furnished in confidence which relates to the business, personal of financial affairs of any person or organization;

(4) Inter-agency and intera-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission; or

(5) Personnel, medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b) Any reasonably segregable portion of an official record shall be provided upon request after deletion of any portion of the requested record which is exempt from disclosure under this § 2005.21.

Subpart D—Processing Information Requests

§ 2005.30 Prompt response to requests.

(a) Within ten working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request, the General Counsel or his designee shall determine whether to comply with or deny such request in whole or in part and shall transmit such determination to the requester, unless an extension is made under paragraph (c) of this section. A legal public holiday is one established by the Congress.

(b) Only the General Counsel or his designee may deny a request. The General Counsel is the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a). If a denial is made at the behest of another agency, the person in that agency responsible for urging the denial may also be a "person responsible for the denial" if he or she is so advised before the General Counsel informs the requester that a request is denied.

(c) In unusual circumstances as specified in this paragraph, the General Counsel may extend the time for the initial determination of a request up to a total of ten working days (excluding Saturdays, Sundays and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reason for the extension and the date upon which a determination is expected to be transmitted. The Commission may exercise the extended response option when there is a need to:

(1) Search for and collect the requested records from field facilities or

other establishments that are separate from the Commission;

(2) Search for, collect, and review a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having substantial interest in the determination in the request, which consultations shall be conducted with all practical speed.

(d) If no determination has been transmitted at the end of the ten-day working period, or the last extension thereof, the requester may deem a request denied, and exercise a right of appeal in accordance with § 2005.32. When no determination can be transmitted within the applicable time limit, the General Counsel shall nevertheless continue to process the request. On expiration of the time limit, the requester shall be informed of the reason for the delay and of the day on which a determination is expected to be transmitted. The requester shall also be informed of his or her rights (1) to treat the delay as a denial and file for judicial review under 5 U.S.C. (a)(4)(B) and § 2005.33 of this part, and (2) to appeal to the Staff Director in accordance with § 2005.32. The requester may also be asked to forgo an appeal until a determination is made.

§ 2005.31 Denials.

(a) A reply denying a request for any records, in whole or in part, shall be in writing, signed by the General Counsel, and shall include: (1) a specific reference to the exemption or exemptions under the FOIA authorizing the withholding of the record; (2) a brief explanation of the exemption(s) applicable to the record(s) withheld; and (3) a statement indicating how the denial may be appealed (see § 2005.32 of this part).

(b) Judicial review is thereafter available as set forth in §§ 2005.32(d) and 2005.33 of this part.

§ 2005.32 Appeals.

(a) When the General Counsel has denied a request for a record in whole or in part, the requester may appeal to the Staff Director of the Commission within 30 days after receiving the denial notification. Appeals shall be in writing, addressed to the Staff Director, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503.

(b) The Staff Director will act upon an appeal within twenty working days (excluding Saturdays, Sundays or legal public holidays) of its receipt, unless an extension is made under paragraph (c) of this section.

(c) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten working days (excluding Saturdays, Sundays and legal public holidays) minus any extension granted at the initial request level pursuant to § 2005.30(c). Such extension shall be made by written notice to the requester setting forth the reason for the extension and the date on which a determination is expected to be transmitted. The Staff Director of the Commission may exercise the extended response option for appeals for any of the reasons set forth in paragraphs (c)(1) through (c)(3) of § 2005.30.

(d) If no determination of the appeal has been transmitted at the end of the twenty-day working period or the last extension thereof, the requester is deemed to have exhausted all administrative remedies and thereupon has a right to judicial review in a United States District Court as specified in 5 U.S.C. 552(a)(4). When no determination can be made by the agency within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be transmitted, and of the right to seek judicial review in the United States District Court in the district in which he or she resides or has a principal place of business, the District in which the records are situated, or the District of Columbia. The requester may be asked to forego judicial review until the Commission's Staff Director has made a determination of how to respond to the appeal.

(e) The Staff Director's determination on the appeal shall be made in writing and transmitted at once to the FOIA requester. An affirmance, in whole or in part, of a denial of a requester for records shall include:

(1) A reference to a specific exemption or exemptions under FOIA authorizing the withholding of the record;

(2) A brief explanation of how the exemption(s) applies to the record(s) withheld, and

(3) A statement that judicial review of the decision on appeal is available as set forth in § 2005.33 of this part.

§ 2005.33 Judicial review.

Judicial review of a denial of a request under § 2005.31, or a denial of an appeal under § 2005.32, is available in a United States District Court

(a) For the judicial district in which the requester resides or has a principal place of business, or

(b) For the judicial district in which the agency records are situated, or

(c) For the District of Columbia.

Jurisdiction of the Court is granted under 5 U.S.C. 552(a)(4)(B).

PART 2010—CONSTITUTION BICENTENNIAL EDUCATIONAL GRANT PROGRAM

Subpart A—General

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2010.2 Eligible parties.
2010.3 Types of awards.
2010.4 Applicable laws and regulations.

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2010.40 The grant agreement.
2010.41 Post-Award disputes and appeals.

AUTHORITY: Pub. L. 98-101 as amended; Title V of Pub. L. 99-194.

SOURCE: 52 FR 30582, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 2010.1 Program purpose.

The purpose of the Commission's Constitution Bicentennial Educational Grant Program is to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights. Instructional materials and programs developed with Commission funding must be designed for use by elementary and secondary school teachers and students.

§ 2010.2 Eligible parties.

Local educational agencies, private elementary and secondary schools, private organizations, individuals, and State and local agencies in the United States are eligible to apply for grant funding from the Commission. Colleges, universities and adult education programs are also eligible to apply provided the proposed project or program is designed for use in elementary and secondary schools. Grants will not be made to profit making organizations.

§ 2010.3 Types of awards.

(a) The Commission expects to make two types of awards with its authorized grant funding. The expected awards for fiscal year 1988 are as follows:

(1) $2,850,000 of the grant funding is expected to be available from Congress to support the National Bicentennial Competition on the Constitution and the Bill of Rights.

(2) Approximately $2,150,000 of the grant funding is expected to be available to fund the development of instructional materials and programs on the Constitution and Bill of Rights. Awards in this category of funding will be competitive and discretionary to eligible applicants as specified in § 2010.2.

(b) A portion of the above amounts may be used for necessary Commission administrative expenses, including staff, required to operate this grant program.

§ 2010.4 Applicable laws and regulations.

The following laws, regulations, and procedures apply to applicants for and recipients of grants under this part:

(a) The Bicentennial Commission on the U.S. Constitution Act (Pub. L. 98-101), as amended.

(b) Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99-194), as amended.

(c) The regulations in this Part 2010.

(d) The applicable Office of Management and Budget Circulars (OMB) (A-87, A-21, A-122, A-102, A-110, A-128).

(e) Office of Justice Programs (OJP) Manual M 7100.1C Fiscal and Administrative Guide for Grants. (U.S. Department of Justice.)

Copies of the OMB circulars and the OJP manual may be obtained by writing to: The Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503, Attn: Educational Grant Program.

(f) The Grant Agreement accompanying every assistance award.

Subpart B—Projects Assisted by the Commission

§ 2010.10 What may be funded.

(a) The Commission is authorized to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights for use in elementary and secondary schools. The Commission will accept grant proposals from any eligible party as specified in § 2010.2.

(b) The Commission is also authorized to implement the National Bicentennial Competition on the Constitution and Bill of Rights. This is an ongoing educational program developed by the Center for Civic Education with prior federal assistance. Congress has directed the Commission to award a grant for program implementation to the Center. Consequently, no other grant proposals from any other party can be accepted for this program.

§ 2010.11 What may not be funded.

The following activities may not be assisted with Commission funding:

(a) Real property acquisition.

(b) Construction.

(c) Study and research in pursu
an academic degree.

(d) Activities which espouse
attack partisan or religious beliefs.

(e) Activities that would involve
Commission in the policymaking
esses of any government or gov
ment agency.

§ 2010.12 Funding priority.

(a) The Commission will give pr
ty to proposals that focus on stren
ening the ability of elementary
secondary teachers to teach suc
fully the principles of the Cons
tion and the Bill of Rights to stude
This may be through the developn
of instructional materials, conferen
institutes, or other formats. Impor
ideas and texts about the Constitu
and Bill of Rights should be em
sized. Projects must demonstrate
students will benefit.

(b) All proposed projects sh
focus on one or more of the follow

(1) The Constitution's provisi
antecedents, history, and the struc
of the government it establishes.

(2) The relationship of the Cons
tion to American politics, society,
thought.

(3) The connection between self-
ernment as outlined by the Cons
tion and the purposes of political
that are defined in the Declaratio
Independence.

Subpart C—How To Apply for
Grant

§ 2010.20 Annual program announcem

Once each year, the Commis
makes available to the public a c
prehensive grant program annou
ment explaining how to apply to
Commission for project assista
Copies are available from the Com
sion upon written request. Altho
these regulations are controlling
any conflict with the grant prog
announcement, applicants are u
to study the program announcem
carefully as proposals are develope

§ 2010.21 Grant application kit.

Each year, the Commission develops a grant application kit which contains instructions and forms necessary to apply to the Commission for a grant. All applicants must use the forms and instructions provided by the Commission. Copies are available from the Commission upon written request.

§ 2010.22 Administrative rejection of applications.

An application may be administratively rejected without further consideration if any of the following are noted:

(a) The applicant is not an "eligible party" under 2010.2 of this part.

(b) The applicant is a suspended or debarred grantee with any other federal agency pursuant to Executive Order 12549.

(c) The application does not have an original signature.

(d) The application does not contain a budget and budget narrative.

(e) The application does not contain the required one-page proposal abstract.

(f) The application lacks any other element required by these regulations.

Subpart D—How Awards Are Made

§ 2010.30 How applications are evaluated.

(a) On the basis of the selection criteria contained in the Grant Program Announcement, the Commission undertakes an administrative review and merit review of every application submitted for funding consideration.

(b) An administrative review is a review of an application for completeness and submission in conformity with the application requirements in the Grant Program Announcement.

(c) A merit review is a substantive review of the applicant's proposed activities in terms of appropriateness, feasibility, conformity with the Commission's priorities and the selection criteria, and the quality of the project staffing.

Subpart E—Grantee Responsibilities

§ 2010.40 The grant agreement.

(a) When the Commission awards a grant, the Commission's funding commitment to the recipient is formalized through a written bilateral grant agreement between the Commission and the grantee. The grant agreement will state the following:

(1) The names of the parties entering into the grant agreement.

(2) The amount of funding being provided by the Commission.

(3) The scope of activities authorized to be conducted by the grantee with Commission funding.

(4) The method of funding, the schedule of payments, and the dates interim financial and performance reports are due during the term of the grant agreement.

(5) Any special conditions that must be followed by the grantee during the term of the grant agreement.

(b) Grant agreements may incorporate by reference the grant proposal, the grant budget, and the provisions of the Office of Justice Programs Handbook M 7100.1C, which are applicable to all grant awards made by the Commission. Grant funds will be administered by the U.S. Department of Justice.

§ 2010.41 Post-award disputes and appeals.

(a) Should any post-award dispute arise between the Commission and a grantee, every attempt will be made to resolve the dispute informally between the Commission program officer, the grantee, and the Director of Educational Programs. The Commission will communicate its decision in writing to the grantee.

(b) If a dispute between the Commission and the grantee cannot be resolved informally, the grantee may appeal any adverse decision in writing to the General Counsel of the Commission. A written appeal must contain a discussion of the dispute, attempts to informally resolve any disagreements, and the practical and legal relief sought.

(c) The General Counsel may either hold a fact-finding conference with the disputing parties, or decide the dispute on the written appeal record provided by the grantee and the Commission staff. The General Counsel shall issue a written decision of findings and conclusions within 30 days after receiving an appeal.

(d) If the decision of the General Counsel is adverse, the grantee may make a final written appeal to the Chairman of the Commission within five days after receiving the decision of the General Counsel. The Staff Director of the Commission shall function as the Chairman's designee for receipt and processing of final administrative appeals to the Chairman. The decision of the Chairman is final.

PART 2015—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

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2015.2 Scope of subpart.
2015.3 Definitions.
2015.4 Applicability.
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Subpart B—Pre-Award Requirements

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ments.
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Subpart E—Entitlements [Reserved]

AUTHORITY: Pub. L. 98-101, as ame
and Pub. L. 99-194, as amended.

SOURCE: 53 FR 8084 and 8087, Ma
1988, unless otherwise noted.

Subpart A—General

§ 2015.1 Purpose and scope of this pa

This part establishes uniform
ministrative rules for Federal g
and cooperative agreements
subawards to State, local and In
tribal governments.

§ 2015.2 Scope of subpart.

This subpart contains general
pertaining to this part and proced
for control of exceptions from
part.

§ 2015.3 Definitions.

As used in this part:

"*Accrued expenditures*" mean
charges incurred by the gra
during a given period requiring
provision of funds for: (1) Goods
other tangible property received
services performed by employees,
tractors, subgrantees, subcontrac
and other payees; and (3) o
amounts becoming owed under
grams for which no current servic
performance is required, such as a
ities, insurance claims, and other b
fit payments.

"*Accrued income*" means the su
(1) Earnings during a given pe
from services performed by the g
ee and goods and other tangible p

erty delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost*" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"*Federally recognized Indian tribal government*" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government*" means a State or local government or a federally recognized Indian tribal government.

"*Grant*" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee*" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government*" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations*" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the United States Office of Management and Budget.

"*Outlays*" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method*" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval*" means documentation evidencing consent prior to incurring specific cost.

"*Real property*" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share*", when referring to th awarding agency's portion of rea property, equipment or supplies means the same percentage as th awarding agency's portion of the acquiring party's total costs under th grant to which the acquisition cost under the grant to which the acquisition cost of the property was charged Only costs are to be counted—not th value of third-party in-kind contributions.

"*State*" means any of the severa States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"*Subgrant*" means an award of financial assistance in the form of money, or property in lieu of money made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases nor does it include any form of assistance which is excluded from the definition of "*grant*" in this part.

"*Subgrantee*" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies*" means all tangible personal property other than "*equipment*" as defined in this part.

"*Suspension*" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination*" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "*Termination*" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant*" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions*" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 2015.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 2015.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 2015.4(a) (3) through (8) are subject to Subpart E.

§ 2015.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute or authorized in accordance with the exception provision in § 2015.6.

§ 2015.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 2015.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted.

Previously submitted pages with information that is still current need not be resubmitted.

§ 2015.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 2015.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 2015.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelle
checks, paid bills, payrolls, time an
attendance records, contract and su
grant award documents, etc.

(7) *Cash management.* Procedur
for minimizing the time elapsing b
tween the transfer of funds from th
U.S. Treasury and disbursement b
grantees and subgrantees must be fo
lowed whenever advance payment pr
cedures are used. Grantees must esta
lish reasonable procedures to ensu
the receipt of reports on subgrantee
cash balances and cash disbursemen
in sufficient time to enable them
prepare complete and accurate cas
transactions reports to the awardi
agency. When advances are made b
letter-of-credit or electronic transf
of funds methods, the grantee mu
make drawdowns as close as possib
to the time of making disbursement
Grantees must monitor cash dra
downs by their subgrantees to assu
that they conform substantially to th
same standards of timing and amou
as apply to advances to the grantees.

(c) An awarding agency may revie
the adequacy of the financial manag
ment system of any applicant for f
nancial assistance as part of
preaward review or at any time subs
quent to award.

§ 2015.21 Payment.

(a) *Scope.* This section prescribes th
basic standard and the methods und
which a Federal agency will make pa
ments to grantees, and grantees wi
make payments to subgrantees an
contractors.

(b) *Basic standard.* Methods an
procedures for payment shall min
mize the time elapsing between th
transfer of funds and disbursement b
the grantee or subgrantee, in accor
ance with Treasury regulations at 3
CFR Part 205.

(c) *Advances.* Grantees and subgra
tees shall be paid in advance, provide
they maintain or demonstrate the wil
ingness and ability to maintain proc
dures to minimize the time elapsin
between the transfer of the funds an
their disbursement by the grantee c
subgrantee.

(d) *Reimbursement.* Reimburseme
shall be the preferred method whe

the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 2015.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 2015.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 2015.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 2015.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 2015.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 2015.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or sub-

grantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 2015.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 2015.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 2015.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 2015.31 and 2015.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 2015.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide **$25,000** or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in in-

stance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 2015.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 2015.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 2015.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 2015.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost prin-

ciples (see § 2015.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 2015.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 2015.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was

originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 2015.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under
a grant or subgrant is no lon
needed for the original project or p
gram or for other activities curren
or previously supported by a Fede
agency, disposition of the equipm
will be made as follows:

(1) Items of equipment with a c
rent per-unit fair market value of
than $5,000 may be retained, sold
otherwise disposed of with no furt
obligation to the awarding agency.

(2) Items of equipment with a c
rent per unit fair market value
excess of $5,000 may be retained
sold and the awarding agency sh
have a right to an amount calcula
by multiplying the current mar
value or proceeds from sale by
awarding agency's share of the equ
ment.

(3) In cases where a grantee or s
grantee fails to take appropriate dis
sition actions, the awarding agen
may direct the grantee or subgran
to take excess and disposition actio

(f) *Federal equipment.* In the even
grantee or subgrantee is provided f
erally-owned equipment:

(1) Title will remain vested in
Federal Government.

(2) Grantees or subgrantees
manage the equipment in accorda
with Federal agency rules and pro
dures, and submit an annual invent
listing.

(3) When the equipment is no lon
needed, the grantee or subgrantee
request disposition instructions fr
the Federal agency.

(g) *Right to transfer title.* The Fed
al awarding agency may reserve
right to transfer title to the Fede
Government or a third part named
the awarding agency when such
third party is otherwise eligible un
existing statutes. Such transfers sh
be subject to the following standar

(1) The property shall be identif
in the grant or otherwise made kno
to the grantee in writing.

(2) The Federal awarding agen
shall issue disposition instruct
within 120 calendar days after the
of the Federal support of the proj
for which it was acquired. If the F
eral awarding agency fails to issue
position instructions within the
calendar-day period the grantee sh
follow § 2015.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 2015.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 2015.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 2015.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 2015.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that
other contract is suitable, and

(ii) If the contract includes a ceil
price that the contractor exceeds at
own risk.

(11) Grantees and subgrantees al
will be responsible, in accordance w
good administrative practice
sound business judgment, for the
tlement of all contractual and adm
istrative issues arising out of procu
ments. These issues include, but
not limited to source evaluation, p
tests, disputes, and claims. Th
standards do not relieve the grantee
subgrantee of any contractual resp
sibilities under its contracts. Fede
agencies will not substitute their ju
ment for that of the grantee or s
grantee unless the matter is primar
a Federal concern. Violations of
will be referred to the local, State,
Federal authority having proper ju
diction.

(12) Grantees and subgrantees
have protest procedures to handle
resolve disputes relating to their p
curements and shall in all instan
disclose information regarding
protest to the awarding agency. A p
testor must exhaust all administrat
remedies with the grantee and s
grantee before pursuing a protest w
the Federal agency. Reviews of p
tests by the Federal agency will
limited to:

(i) Violations of Federal law or re
lations and the standards of this s
tion (violations of State or local
will be under the jurisdiction of St
or local authorities) and

(ii) Violations of the grantee's
subgrantee's protest procedures
failure to review a complaint or p
test. Protests received by the Fede
agency other than those specif
above will be referred to the gran
or subgrantee.

(c) *Competition.* (1) All procurem
transactions will be conducted in
manner providing full and open co
petition consistent with the standa
of § 2015.36. Some of the situati
considered to be restrictive of comp
tion include but are not limited to:

(i) Placing unreasonable requi
ments on firms in order for them
qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 2015.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 2015.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 2015.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 2015.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 2015.10;

(2) Section 2015.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 2015.21; and

(4) Section 2015.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 2015.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semiannual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 2015.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 2015.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 2015.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 2015.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 2015.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treas*
check advance. (i) When a constr
tion grant is paid by letter of cre
electronic funds transfer or Treas
check advances, the grantee
report its outlays to the Fede
agency using Standard Form
Outlay Report and Request for Re
bursement for Construction Progra
The Federal agency will provide
necessary special instruction. How
er, frequency and due date shall
governed by § 2015.41(b) (3) and (4).

(ii) When a construction grant
paid by Treasury check advan
based on periodic requests from
grantee, the advances will be reque
ed on the form specified
§ 2015.41(d).

(iii) The Federal agency may sub
tute the Financial Status Report sp
ified in § 2015.41(b) for the Out
Report and Request for Reimbur
ment for Construction Programs.

(3) *Accounting basis.* The account
basis for the Outlay Report and
quest for Reimbursement for C
struction Programs shall be govern
by § 2015.41(b)(2).

§ 2015.42 Retention and access requ ments for records.

(a) *Applicability.* (1) This section
plies to all financial and programma
records, supporting documents, sta
tical records, and other records
grantees or subgrantees which are:

(i) Required to be maintained by
terms of this part, program regu
tions or the grant agreement, or

(ii) Otherwise reasonably conside
as pertinent to program regulations
the grant agreement.

(2) This section does not apply
records maintained by contractors
subcontractors. For a requirement
place a provision concerning records
certain kinds of contracts,
§ 2015.36(i)(10).

(b) *Length of retention period.*
Except as otherwise provided, reco
must be retained for three years fr
the starting date specified in pa
graph (c) of this section.

(2) If any litigation, claim, negot
tion, audit or other action involvi
the records has been started bef
the expiration of the 3-year peri

the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 2015.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment a* *suspension.* The enforcement remedi identified in this section, includi suspension and termination, do n preclude grantee or subgrantee fro being subject to "Debarment and Su pension" under E.O. 12549 (s § 2015.35).

§ 2015.44 Termination for convenience.

Except as provided in § 2015. awards may be terminated in whole in part only as follows:

(a) By the awarding agency with th consent of the grantee or subgrant in which case the two parties sha agree upon the termination cond tions, including the effective date an in the case of partial termination, th portion to be terminated, or

(b) By the grantee or subgrant upon written notification to th awarding agency, setting forth th reasons for such termination, the e fective date, and in the case of parti termination, the portion to be term nated. However, if, in the case of partial termination, the awardin agency determines that the remainin portion of the award will not accom plish the purposes for which th award was made, the awarding agenc may terminate the award in its entire ty under either § 2015.43 or paragrap (a) of this section.

Subpart D—After-The-Grant Requirements

§ 2015.50 Closeout.

(a) *General.* The Federal agency wi close out the award when it dete mines that all applicable administra tive actions and all required work o the grant has been completed.

(b) *Reports.* Within 90 days after th expiration or termination of the grant the grantee must submit all financial performance, and other reports re quired as a condition of the grant Upon request by the grantee, Federa agencies may extend this timeframe These may include but are not limite to:

(1) *Final performance or progres* *report.*

(2) *Financial Status Report* (*SF 269* *or Outlay Report and Request for Re*

imbursement for Construction Programs (SF-271) (as applicable).

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 2015.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 2015.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 2015.42;

(d) Property management requirements in §§ 2015.31 and 2015.32; and

(e) Audit requirements in § 2015.26.

§ 2015.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

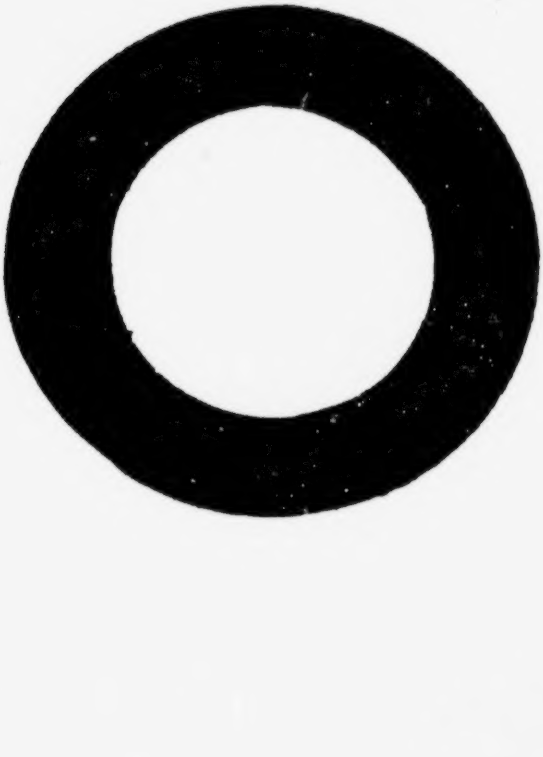
(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]



CHAPTER XXI—COMMISSION OF FINE ARTS

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PART 2101—FUNCTIONS AND ORGANIZATION

Subpart A—Functions and Responsibilities of the Commission

Sec.
2101.1 Statutory and Executive Order authority.
2101.2 Relationships of Commission's functions to responsibilities of other government units.

Subpart B—General Organization

2101.10 The Commission.
2101.11 Secretary to the Commission.
2101.12 Georgetown Board of Architectural Consultants.

AUTHORITY: 40 U.S.C. 104, 36 Stat. 371; 40 U.S.C. 106, 74 Stat. 128; E.O. 1259, (Oct. 25, 1910); E.O. 1862, (Nov. 28, 1913) E.O. 3524, (July 28, 1921); 40 U.S.C. 121, 46 Stat. 366; 40 U.S.C. 121, 53 Stat. 1144; D.C. Code 5-801, 64 Stat. 903; 36 U.S.C. 124, 60 Stat. 317; 40 U.S.C. 72, 66 Stat. 781; 10 U.S.C. 4594, 71 Stat. 589, unless otherwise noted.

SOURCE: 44 FR 67050, Nov. 21, 1979, unless otherwise noted.

Subpart A—Functions and Responsibilities of the Commission

§ 2101.1 Statutory and Executive Order authority.

The Commission of Fine Arts (referred to as the "Commission") functions pursuant to statutes of the United States and Executive Orders of Presidents, as follows:

(a) *Public buildings, other structures, and parklands.* (1) For public buildings to be erected in the District of Columbia by the federal government and for other structures to be so erected which are important to the appearance of the city, the Commission comments and advises on the plans and on the merits of the designs before final approval or action;

(2) For statutes, fountains and monuments to be erected in the District of Columbia under authority of the federal government, the Commission advises upon their location in public squares, streets, and parks, upon the selection of models and upon the merits of the designs;

(3) For monuments to be erected at any location pursuant to the American Battle Monuments Act, the Commission approves the designs and
als before they are accepted
Monuments Commission;

(4) For parks within the Dis
Columbia, when plans of imp
are under consideration, the C
sion advises upon the merits of
signs; and

(5) For the selection by the N
Capital Planning Commission c
suitable for development of t
tional Capital park, parkwa
playground system in the Dis
Columbia, Maryland, and Virgi
Commission provides advice.

(b) *Private buildings borderi*
tain public areas in Washingto
For buildings to be erected or a
in locations which border the
the White House, the intern
portion of Pennsylvania Aven
Mall Park System, Lafayette Pa
Zoological Park, Rock Creek
Parkway, or Potomac Park o
way, or are otherwise within a
fined by the official plats p
pursuant to Section 2 of the
stead-Luce Act, the Commiss
views the plans as they rel
height and appearance and t
and texture of the exterior
makes recommendations to th
ernment of the District of Col
including ones for changes as
judgement of the Commission a
essary to prevent reasonably av
impairment of the public values
sented by the areas along whi
buildings border. (The Shipstea
Act, 46 Stat. 366 as amend
U.S.C. 121; D.C. Code 5-410).)

(c) *Georgetown buildings.* For
ings to be constructed, altered,
structed, or razed within the
the District of Columbia kn
"Old Georgetown." The Com
reviews and reports to the Dis
Columbia Government on p

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[1] Alteration does not include razi
building (*Commissioner of the Dis*
Columbia v. *Bennenson*, D.C. Ct.
1974, 329 A. 2d 437). Partial den
however, is viewed as an alteratio
Committee to Preserve Rhodes Tav
the National Processional Route v.
Carr Company, et al., U.S. Ct. of
D.C. Cir., 1979, 79-1457, Dept. Justi
for Fed. Appellee).

exterior architectural features, height, appearance, color, and texture of exterior materials as would be seen from public space; and the Commission makes recommendations to such government as to the effect of the plans on the preservation and protection of places and areas that have historic interest or that manifest exemplary features and types of architecture, including recommendations for any changes in plans necessary in the judgement of the Commission to preserve the historic value of Old Georgetown, and takes any such actions as in the judgement of the Commission are right or proper in the circumstances. (Old Georgetown Act, 64 Stat. 903 (D.C. Code 5-801)

(d) *United States medals, insignia, and coins.* On medals, insignia, and coins to be produced by an executive department of the United States, the Commission advises as to the merits of their designs; and if requested to do so, the Commission advises the Heraldic Branch, Quartermaster Corps, Department of the Army, on merits of designs it proposes for medals, insignia, seals, and the like. (E.O. 3254 of July 28, 1921 and 71 Stat. 589 (10 U.S.C. 4594))

(e) *Questions of art with which the Federal Government is concerned.* When required to do so by the President or by either House of Congress, the Commission advises generally on questions of art, and whenever questions of such nature are submitted to it by an officer or department of the federal government the Commission advises and comments. (36 Stat. 371 (40 U.S.C. 104) and E.O. 1862 of November 28, 1913).

§ 2101.2 Relationships of Commission's functions to responsibilities of other government units.

(a) *Projects involving the Capitol building and the Library of Congress.* Plans concerning the Capitol building and the buildings of the Library of Congress are outside the purview of the Commission except as to questions on which the Congress requires the Commission to advise.

(b) *Other United States Government projects.* Officers and departments of the United States Government responsible for finally approving or acting upon proposed projects within the purview of the Commission's functions as described in § 2101.1 (a) and (d) are required first to submit plans or designs for such projects to the Commission and obtain its advice and comments.

(c) *Projects within the jurisdiction of the District of Columbia Government.* The District of Columbia seeks Commission advice on exterior alteration or new construction of public buildings or major public works within its boundaries. The District of Columbia Government also shall seek Commission advice on certain private construction requiring building or demolition permits from the D.C. Permit Branch (D.C. Law 5-422). These include certain actions by the District of Columbia Government pursuant to either D.C. Law 5-422 or D.C. Law 2-144 within areas subject to the Shipstead-Luce or Old Georgetown Acts (§ 2101.1 (b) and (c)) prior to the issuance of a permit.[2] Lot subdivision, alteration of buildings, demolition, or new construction at individually designated landmarks or within historic districts are further subject to the permit requirements of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144).[3]

Subpart B—General Organization

AUTHORITY: 36 Stat. 371 as amended (40 U.S.C. 104 and 106); sec. 3, 64 Stat. 903 (D.C. Code 5-801).

§ 2101.10 The Commission.

The Commission is composed of seven members, each of whom is appointed by the President and serves for a period of four years or until his or her successor is appointed and qualifies. The Chairman is elected by the members. The Commission is assisted by a staff as authorized by the Commission.

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[2] Provisions of the Shipstead-Luce Act (§ 2101.1(b)) do not include full demolition, though partial demolition is viewed as an alteration.

[3] The Historic Sites Subdivision Amendment of 1976 (D.C. Law 1-80) purported to give the Commission advisory authority over subdivision permits within the areas covered by the Shipstead-Luce Act and the Old Georgetown Act, but the law was repealed by the 1978 Act (D.C. Law 2-144).

§ 2101.11 Secretary to the Commission.

Subject to the direction of the Chairman, the Secretary to the Commission is responsible for providing secretarial and record-keeping services by the staff to support the functions of the Commission; for preparing the agenda of Commission meetings; for organizing the presentation before the Commission of plans, designs, or questions upon which it is to advise, comment, or respond; for interpreting the Commission's conclusions, advice, or recommendations on each matter submitted to it; and for maintaining custody of the Commission's records. The Assistant Secretary of the Commission shall carry out duties delegated to him by the Secretary and shall act in place of the Secretary during his absence or disability.

§ 2101.12 Georgetown Board of Architectural Consultants.

To assist the Commission in carrying out the purposes of the Old Georgetown Act (§ 2101.1(c)), a committee of three architects appointed for a term of three years by the Commission serves as the Board of Architectural Consultants without expense to the United States. This committee advises the Commission regarding designs and plans referred to it.

PART 2102—MEETINGS AND PROCEDURES OF THE COMMISSION

Subpart A—Commission Meetings

Sec.
2102.1 Times and places of meetings.
2102.2 Actions outside of meetings.
2102.3 Public notice of meetings.
2102.4 Public attendance and participation.
2102.5 Records and minutes; public inspection.

Subpart B—Procedures on Submissions of Plans or Designs

2102.10 Timing, scope and content of submissions for proposed projects involving land, buildings or other structures.
2102.11 Scope and content of submi
for proposed medals, insignia,
seals, and the like.
2102.12 Responses of Commission t
missions.

AUTHORITY: Sec. 10, 86 Stat. 770 as a
ed (5 U.S.C., App. 1, Federal Advisory
mittee Act 10); OMB Circular No. A-
FR 2306, January 23, 1973) as amende

SOURCE: 44 FR 67051, Nov. 21, 1979,
otherwise noted.

Subpart A—Commission Meetin

§ 2102.1 Times and places of meeting

Regular meetings of the Con
sion, open to the public, are
monthly on the second Tuesday o
month, beginning at 10:00 o'clock
in its offices at 708 Jackson
NW., Washington, DC 20006, e
that by action of the Commiss
regular meeting in any parti
month may be omitted or it ma
held on another day or at a diff
time or place. A special meeting,
to the public, may be held in the
val between regular meetings
call of the Chairman and five
written notice of the time and
mailed to each member who doe
in writing waive such notice. O
matters of official business, the
mission shall conduct its delibera
and reach its conclusions at such
meetings except as stated in § 21
provided, however, that Commi
members may receive staff briefin
may have informal background di
sions among themselves and the
outside of such meetings.

§ 2102.2 Actions outside of meetings.

Between meetings in situatio
emergency, the Commission ma
through a canvass by the Secreta
individual members, provided tha
action so taken is brought up and
fied at the next meeting. In add
the Commission members may
vene away from the Commission
fices to make inspections at the s
a proposed project or at the lo
of a mock-up for the project and
then and there reach its conclu
respecting such project which sh
recorded in the minutes of the
ing held on the same day or, if

was then held, in the minutes of the next meeting.

§ 2102.3 Public notice of meetings.

Notice of each meeting of the Commission shall be made at least one week in advance by posting in the lower lobby of the Commission's offices and by submission for publication in the FEDERAL REGISTER.

§ 2102.4 Public attendance and participation.

Interested persons are permitted to attend meetings of the Commission, to file statements with the Commission at or before a meeting, and to appear before the Commission when it is in meeting, provided that an appearance will be permitted only if it is germane to the functions and policies of the Commission and to the matter or issues then before the Commission and only if the presentation or argument is made in a concise manner within reasonable time limits and it avoids duplicating information or views already before the Commission. A decision of the Chairman as to the order of appearances and as to compliance with these regulations by any person shall be final unless the Commission determines otherwise.

§ 2102.5 Records and minutes; public inspection.

A detailed record of each meeting shall be made and kept which shall contain names of persons who appeared before the Commission, information or arguments presented orally, discussions held and conclusions, reached, together with copies of all written, printed, or graphic materials presented. The Secretary shall also prepare minutes of each meeting which shall state the time and place it was held and attendance by Commission members and staff and which shall contain a complete summary of matters discussed and conclusions reached and an explanation of the extent of public participation, including names of persons who presented oral or written statements and an estimate of the number of members of the public who attended; and he shall send a copy to each member of the Commission. The accuracy of all such minutes shall be certified by the Chairman. The minutes and any completed reports, studies, agenda or other documents made available to, or prepared for or by, the Commission shall be available for public inspection and, at the requesting party's expense, for copying at the offices of the Commission.

Subpart B—Procedures on Submissions of Plans or Designs

§ 2102.10 Timing, scope and content of submissions for proposed projects involving land, buildings, or other structures.

(a) A party proposing a project which is within the purview of the Commission's functions under § 2101.1 (a), (b), or (c) should make a submission when preliminary plans for the project are ready but before detailed plans and specifications or working drawings are prepared. In order to assure that a submission will be considered at the next scheduled meeting of the Commission, it should be delivered to the Commission's offices not later than five (5) days before the meeting; if it is a project subject to review first by the Georgetown Board, not later than three (3) days before the Georgetown Board meeting. The Commission will attempt to consider a submission which is not made in conformity with this schedule, but it reserves the right to postpone consideration until its next subsequent meeting.

(b) Each submission should state or disclose: (1) The nature, location, and justification of the project, including any relevant historical information about a building or other structure to be altered or razed,

(2) The identity of the owner or developer (or for public buildings, the governmental unit with authority to approve or act upon the plans) and of the architect,

(3) The functions, uses, and purpose of the project, and

(4) Other information to the extent it is relevant, such as area studies, site plans, building and landscape schematics, renderings, models, depictions or samples of exterior materials and

components, and photographs of existing conditions to be affected by the project. Alternative proposals may be included within one submission. The information submitted shall be sufficiently complete, detailed, and accurate as will enable the Commission to judge the ultimate character, siting, height, bulk, and appearance of the project, in its entirety, including the grounds within the scope of the project, its setting and environs, and its effect upon existing conditions and upon historical and prevailing architectural values.

(c) If a project consists of a first or intermediate phase of a contemplated larger program of construction, similar information about the eventual plans should accompany the submission. Even though a submission relates only to approval for razing or removal of a building or other structure, the project will be regarded as part of phased development, and the submission is subject to such requirement.

(d) If the project involves a statute, fountain or a monument within the purview of the Commission under § 2101.1(a)(2), partial submissions should be made as appropriate to permit the Commission to advise on each aspect of the project starting with the selection of any artist to be employed.

(e) The Commission staff will advise owners and architects concerning the scope and content of particular submissions. Material relevant to the functions and policies of the Commission varies greatly depending upon the nature, size, and importance of the project to be reviewed by the Commission. Also, it is the policy of the Commission not to impose unnecessary burdens or delay on persons who make submissions to the Commission. However, the Commission at any meeting may decline to reach a conclusion about a proposed project if it deems the submission inadequate for its purposes, or it may condition its conclusions on the submission of further information to it at a later meeting or, in its discretion, to the staff of the Commission only.

(f) The Commission staff, members of the Georgetown Board, interested members of the public, or the submitting party may augment any subm
sion by additional relevant inform
tion made available to the Commissi
before or at the meeting where t
submission is considered. The Comm
sion staff should also make availab
to the Commission at the meeti
where a submission is considered i
formation concerning prior conside
ations or conclusions of the Commi
sion concerning the same project
earlier versions of it.

§ 2102.11 Scope and content of subm sions for proposed medals, insigni coins, seals, and the like.

Each submission of the design for
proposed item which is within t
Commission's purview und
§ 2101.1(d) should identify the spo
soring government unit and disclosu
the uses and purposes of the item, t
size and forms in which it will be pr
duced, and the materials and finish
to be used, including colors if an
along with a sketch, model, or prot
type.

§ 2102.12 Responses of Commission submissions.

(a) The Commission before disposi
of any project presented to it may a
for the proposed plans or designs to
changed in certain particulars and r
submitted or for the opportunity
review plans, designs, specifications
certain particulars at a later stage
their development and to see sampl
or mock-ups of materials or comp
nents; and when appropriate in th
matter of a statute or other object
art, the Commission may ask for th
opportunity to see a larger or fu
scale model. All conclusions, advice
comments of the Commission whic
lead to further development of plan
designs, and specifications or to actu
carrying out of the project are ma
in contemplation that such steps w
conform in all substantial respec
with the plans or designs submitted
the Commission including only suc
changes as the Commission may ha
recommended; and any other chang
in plans or designs require furth
submission to the Commission.

(b) In the case of plans for a proje
subject to the Old Georgetown A

(§ 2101.1(c)), if the Commission does not respond with a report on such plans within forty-five days after their submission, its approval shall be assumed and a permit may be issued by the government of the District of Columbia.

PART 2103—STATEMENTS OF POLICY

§ 2103.1 General approaches to review of plans by the Commission.

The Commission functions relate to the appearance of proposed projects within its purview as they may be seen from public space. These functions are to serve the purpose of conserving and enhancing the visual assets which contribute significantly to the character and quality of Washington as the nation's capital and which meaningfully reflect the history and features of its development over nearly two centuries. Where existing conditions detract from the overall appearance of official Washington or historic Georgetown—such as conditions caused by temporary, deteriorated, or abandoned buildings of little or no historical or architectural value, by interrupted developments, or by vacant lots not devoted to public use as parks or squares—the Commission will favor suitable corrections to these conditions. When changes or additions are proposed in other circumstances, the Commission may consider whether the public need or value of the project or the private interests to be served thereby justify making any change or addition, and it will consider whether the project can be accomplished in reasonable harmony with the nearby area, with a minimum loss of attractive features of the existing building or site, with due deference to the historical and architectural values affected, and without creating an anomalous or disturbing element in the public view of the city.

(36 Stat. 371, 40 U.S.C. 104, as amended by 74 Stat. 128, 40 U.S.C. 106; Executive Order, (E.O. 1259 of Oct. 25, 1910; E.O. 1862 of Nov. 28, 1913; E.O. 3524 of July 28, 1921; 46 Stat. 366, 40 U.S.C. 121, as amended by 53 Stat. 1144, 40 U.S.C. 121; 64 Stat. 903, D.C. Code 5-801; 66 Stat. 781, 40 U.S.C. 72)

[44 FR 67053, Nov. 21, 1979]

PART 2104—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMISSION OF FINE ARTS

Sec.

2104.101 Purpose.
2104.102 Application.
2104.103 Definitions.
2104.104—2104.109 [Reserved]
2104.110 Self-evaluation.
2104.111 Notice.
2104.112—2104.129 [Reserved]
2104.130 General prohibitions against discrimination.
2104.131—2104.139 [Reserved]
2104.140 Employment.
2104.141—2104.148 [Reserved]
2104.149 Program accessibility: Discrimination prohibited.
2104.150 Program accessibility: Existing facilities.
2104.151 Program accessibility: New construction and alterations.
2104.152—2104.159 [Reserved]
2104.160 Communications.
2104.161—2104.169 [Reserved]
2104.170 Compliance procedures.
2104.171—2104.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22895, 22896, June 23, 1986, unless otherwise noted.

§ 2104.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 2104.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 2104.103 Definition.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"Qualified handicapped person" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 2104.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 2104.104—2104.109 [Reserved]

§ 2104.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) a description of areas examined and any problems identified, and

(2) a description of any modifications made.

§ 2104.11 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 2104.112—2104.129 [Reserved]

§§ 2104.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activites of licensees or

certified entities that subject qua
handicapped persons to discrimin
on the basis of handicap. Howeve
programs or activities of entities
are licensed or certified by the a
are not, themselves, covered by
part.

(c) The exclusion of nonhandica
persons from the benefits of a
gram limited by Federal statute o
ecutive order to handicapped pe
or the exclusion of a specific cla
handicapped persons from a pro
limited by Federal statute or E
tive order to a different class of h
capped persons is not prohibite
this part.

(d) The agency shall administer
grams and activities in the most
grated setting appropriate to
needs of qualified handicapped
sons.

§§ 2104.131—2104.139 [Reserved]

§ 2104.140 Employment.

No qualified handicapped pe
shall, on the basis of handicap, be
jected to discrimination in em
ment under any program or act
conducted by the agency. The de
tions, requirements, and procedur
section 501 of the Rehabilitation
of 1973 (29 U.S.C. 791), as establi
by the Equal Employment Oppor
ty Commission in 29 CFR Part
shall apply to employment in fede
conducted programs or activities.

§§ 2104.141—2104.148 [Reserved]

§ 2104.149 Program accessibility: Dis ination prohibited.

Except as otherwise provide
§ 2104.150, no qualified handica
person shall, because the agency
cilities are inaccessible to or unus
by handicapped persons, be denie
benefits of, be excluded from pa
pation in, or otherwise be subjecte
discrimination under any progra
activity conducted by the agency.

§ 2104.150 Program accessibility: Ex facilities.

(a) *General.* The agency shall
ate each program or activity so
the program or activity, when vi
in its entirety, is readily accessib

and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §2104.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 2104.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 2104.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 2104.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 2104.152—2104.159 [Reserved]

§ 2104.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually precribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2104.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 2104.161—2104.169 [Reserved]

§ 2104.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on

the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Secretary, Commission of Fine Arts, shall be responsible for coordinating implementation of this section. Complaints may be sent to Secretary, Commission of Fine Arts, 708 Jackson Place NW., Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 2104.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22895, 22896, June 23, 1986, as amended at 51 FR 22895, June 23, 1986]

§§ 2104.171—2104.999 [Reserved]

PART 2105—RULES FOR COMPLIANCE WITH 5 U.S.C. 552, THE FREEDOM OF INFORMATION ACT

Sec.

2105.1 Purpose and scope.
2105.2 Requests for identifiable records and copies.
2105.3 Action on initial requests.
2105.4 Appeals.
2105.5 Fees.

AUTHORITY: 5 U.S.C. 552, as amended.

SOURCE: 40 FR 40802, Sept. 4, 1975. Redesignated and amended at 51 FR 23056, June 25, 1986, unless otherwise noted.

EDITORIAL NOTE: The regulations in this Part 2105 were formerly codified in 36 CFR Chapter X, Part 1000.

§ 2105.1 Purpose and scope.

This part contains the regulations of the Commission of Fine Arts implementing 5 U.S.C. 552. The regulations of this part provide information concerning the procedures by which records may be obtained from the Commission. Members and employees of the Commission may continue to furnish to the public, informally and without neglecting the rights of requesters described herein, information and records which prior to enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties. Persons seeking information or records of the Commission may find it useful to consult with the Secretary before invoking the formal procedures set out below.

§ 2105.2 Requests for identifiable records and copies.

(a) Formal public requests for information from the records of the Commission of Fine Arts shall be made in writing with the letter clearly marked "FREEDOM OF INFORMATION REQUEST." All such requests should be addressed to the Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006.

(b) Records must be reasonably described. A request for all records falling within a reasonably specific category shall be regarded as conforming to the requirement that records be reasonably described if it enables the records requested to be identified by any process that is not unreasonably burdensome or disruptive of Commission operations.

§ 2105.3 Action on initial requests.

(a) The Secretary will make a determination as to whether or not to release requested information. Generally, determination will be made to release the requested information if: (1) It is not exempt from disclosure or

(2) It is exempt from disclosure but its withholding is neither required by statute, nor supported by sound grounds.

(b) Determination will be dispatched within ten days, excluding Saturdays, Sundays, and legal public holidays, after initial receipt of the request.

(c) In unusual circumstances, the time for initial determination on requests may be delayed up to a total of ten additional days, excluding Saturdays, Sundays, and legal public holidays and notice of such delay shall be dispatched within the first ten days, excluding Saturdays, Sundays, and legal public holidays following the initial receipt of the request.

(d) Letters denying access to information will:

(1) Provide the requester with the reason for the denial.

(2) Inform the requester of his right to appeal the denial within 30 days.

(3) Give the name and title of the official to whom the appeal may be sent.

(4) Give the name and title of the official responsible for the denial.

§ 2105.4 Appeals.

(a) The Chairman of the Commission is the appellate authority for all denials.

(b) The Chairman will act upon the appeal within twenty days, excluding Saturdays, Sundays, and legal public holidays.

(c) In unusual circumstances, the time for action on an appeal may be extended by an additional ten days, excluding Saturdays, Sundays, and legal public holidays minus any extension granted at the initial request level under § 2105.3(c).

(d) In the event that the appeal upholds the denial, the requester will be advised that there are provisions for judicial review of such decisions under the Freedom of Information Act.

§ 2105.5 Fees.

(a) Fees shall be charged according to the schedule in paragraph (b) of this section for services rendered in responding to requests for Commission of Fine Arts records under this part unless determination is made that such charges or a portion of them are not in the public interest because furnishing the information primarily benefits the general public.

(b) The following charges will be assessed for the services listed:

(1) For copies of documents 8½" × 14" or smaller, $0.25 for the first copy of the first page and $0.10 for each copy of each page thereafter.

(i) Ordinarily, no more than one copy of each page will be supplied.

(ii) Ordinarily, photographs 8½" × 14" or smaller will be copied on a photocopy machine, rather than by photographing and printing of such photographs.

(2) When in responding to a request copying of bound works such as books

eriodicals, copying of documents
r than 8½" × 14", photographing
printing of records, or other serv-
not normally performed by the
mission and its staff are required,
direct cost of such services or ma-
l to the Commission of Fine Arts
be charged, but only if the re-
ter has been notified of such cost
re it is incurred.

For each one quarter hour spent
lerical personnel in excess of the
quarter hour in searching for and
ucing a requested record, $1.50.

When a search cannot be per-
ed by clerical personnel and the
int of time that must be expend-
the search and collection of the
ested records by such higher level
onnel is substantial, charges may
ade at a rate in excess of the cler-
ate, namely, for each one quarter
spent in excess of the first quar-
our by such higher level person-
in searching for a requested
d, $3.

No charge will be made for time
t in resolving legal or policy issues
ting access to records of known
ents. In addition, no charge will be
for the time involved in examin-
records in connection with deter-
ng whether they are exempt from
datory disclosure and should be
held, as a matter of sound policy.
ddition, no charge will ordinarily
ade if the records requested are
found. However, if the time ex-
ed in processing the request is
antial, and if the requester has
notified that it cannot be deter-
d in advance whether any records
be made available, fees may be
ged.

Where it is anticipated that the
chargeable under this section will
int to more than $10, and the re-
ter has not indicated in advance
villingness to pay fees as high as
nticipated, the requester shall be
ied of the amount of the antici-
d fee or such portion thereof as
readily be estimated. In such
, a request will not be deemed to
been received until the requester
tified of the anticipated cost and
es to bear it. Such a notification
be transmitted as soon as possible
in any event, within five days, excluding Saturdays, Sundays, and legal public holidays after the receipt of the initial request.

(d) Payment should be made by check or money order payable to the U.S. Treasury.

(e)(1) Where the anticipated fee chargeable under this section exceeds $10, an advance deposit of 25% of the anticipated fee or $10, whichever is greater may be required.

(2) Where a requester has previously failed to pay a fee under this section, an advance deposit of the full amount of the anticipated fee may be required.

PART 2106—RULES FOR COMPLIANCE WITH 5 U.S.C. 552a, THE PRIVACY ACT OF 1974

Sec.

2106.1 Rules for determining if an individual is the subject of a record.

2106.2 Requests for access.

2106.3 Access to the accounting of disclosures from records.

2106.4 Requests for copies of records.

2106.5 Requests to amend records.

2106.6 Request for review.

2106.7 Schedule of fees.

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 52369, Nov. 10, 1975. Redesignated and amended at 51 FR 23056, June 25, 1986, unless otherwise noted.

EDITORIAL NOTE: The regulations in this Part 2106 were formerly codified in 36 CFR Chapter X, Part 1002.

§ 2106.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Commission of Fine Arts contains a record pertaining to them should address their inquiries to the Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006. The written inquiry should contain a specific reference to the system of records maintained by CFA listed in the CFA Notices of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of CFA Systems of Records will be made in the FEDERAL REGISTER and copies of the notices will be available upon request to the Secretary when so published. A compilation of such notices will also be made and published by the Office of the Federal Register in accordance with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should contain sufficient identifying information to allow CFA to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances where identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, CFA reserves the right to solicit from the requester additional identifying information.

(c) Ordinarily the requester will be informed whether the named system of records contains a record pertaining to the requester within 10 days of the receipt of such a request (excluding Saturdays, Sundays, and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within 10 days, the Secretary will inform the requester of the reasons for the delay and the date by which a response may be anticipated.

§ 2106.2 Requests for access.

(a) *Requirement for written requests.* Individuals desiring to gain access to a record pertaining to them in a system of records maintained by CFA must submit their request in writing in accordance with the procedures set forth in paragraph (b) of this section.

(b) *Procedures.* (1) Content of the request. The request for access to a record in a system of records shall be addressed to the Secretary, at the address cited above; and shall name the system of records or contain a description (as concise as possible) of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the requester maintained by CFA in a system of records, the request will be presumed to be made under the Privacy Act of 1974. The requester should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.).

(2) Requirements for identification will normally be limited to the presentation of any standard picture and signature or signature identification card, such as driver's license, so that a comparison of the signature and the signature on the original request may be made. The appearing individual will be read paragraph (3), subsection (i) to Title 5 U.S.C. 552a which specifies the penalty for knowingly or willfully requesting or obtaining a record concerning an individual from an agency under false pretenses and asked to sign a statement attesting to the fact that he or she understands the paragraph and that he or she is, in fact, the individual who made the request (or the individual authorized to receive the disclosure by the requesting individual). This signature will be compared with the other two. If the appearing individual is other than the requesting individual, then he or she must also present a letter of introduction signed by the requesting individual so that the comparison of signature may be made.

(c) *CFA action on request.* (1) A request for access will ordinarily be answered within 10 days (excluding Saturdays, Sundays, and legal Federal holidays), except when the Secretary determines otherwise, in which case the requester will be informed of the reason for the delay and an anticipated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the system of records maintained by CFA;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the requester is unable to meet the specified date and time, alternate arrangements may be made with the official specified in paragraph (b)(1) of this section;

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Secretary has determined that it would not unduly impede the requester's right of access;

(iv) The amount of fees charged, if any (see §§ 2106.4 and 2106.7); and

(v) The name, title, and telephone number of the CFR official having operational control over the record.

(A) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification, may access on behalf of the minor any record pertaining to the minor maintained by CFA in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of documents authorizing the legal guardian to so act; and upon suitable personal identification of the guardian.

(B) *Granting access when accompanied or represented by another individual.* When an individual requesting access to his or her record in a system of records maintained by CFA wishes to be accompanied or represented by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record a signed statement authorizing that person access to the record.

(C) *Access in response to congressional inquiries.* Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(vi) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual in such a manner and following such procedures as the Secretary shall direct. When CFA, in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, CFA may transmit such information to a physician named by the individual.

(vii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceeding.

[40 FR 52369, Nov. 10, 1975, as amended at 41 FR 2385, Jan. 16, 1976]

§ 2106.3 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records outlined in § 2106.2 of this Part.

§ 2106.4 Requests for copies of records.

Rules governing requests for copies of records are the same as those for the granting of access to the records outlined in § 2106.2 of this Part (see also § 2106.7 for rules regarding fees).

§ 2106.5 Requests to amend records.

(a) *Requirements for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by CFA must submit their request in writing in accordance with the procedures set forth herein unless the requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions; however, individuals who believe that such records are inaccurate may bring this to the attention of the CFA.

(b) *Procedures.* (1)(i) The request to amend a record in a system of records shall be addressed to the Secretary. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record as set forth above, copies of previous correspondence between the requester and CFA will serve in lieu of a separate description of the record.

(ii) Individuals desiring assistance in the preparation of a request to amend a record should contact the Secretary at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language should also be set forth, or, at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete, should be set forth with such particularity as to permit CFA not only to understand the individual's basis for the request, but also to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by CFA of personal information merely to permit the verification of records, the burden of persuading CFA to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(2) *CFA action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days (excluding Saturdays, Sundays, and legal Federal holidays). In the event that a decision cannot be made within this time frame, the individual making the request will be informed within the 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of the Commission of Fine Arts whether to grant in full, or deny any part of the request to amend the record;

(ii) The reasons for the determination for any part of the request which is denied;

(iii) The name and address of the official with whom an appeal of the denial may be lodged;

(iv) The name and address of the official designated to assist, as necessary, and upon the request of, the individual making the request in preparation of the appeal;

(v) A description of the review of the appeal within CFA (see § 2106.6); and

(vi) A description of any other procedures which may be required of the individual in order to process an appeal.

§ 2106.6 Request for review.

(a) Individuals wishing to request a review of the decision by CFA with regard to an initial request to amend a record in accordance with the provisions of § 2106.5 of this part, should submit the request for review in writing and, to the extent possible, include the information specified in paragraph (a) of this section. Individuals desiring assistance in the preparation of their request for review should contact the Secretary at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from CFA in which the request to amend was denied and also the reasons why the requester believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons as required by § 2106.5 of this part set forth by CFA in its decision denying the amendment. Appeals filed without a complete statement by the requester setting forth the reasons for the review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, the requester's disagreement should be understandably set forth. In order to avoid the unnecessary retention of personal information, CFA reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by CFA within 180 days of the mailing by CFA of its decision upon an initial request. A request for review received after the 180-day period may, at the discretion of the Secretary, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Secretary.

(d) Upon receipt of a request for review, the Secretary will convene a review group composed of the Secretary and the Chairman. This group will review the basis for the requested review and will develop a recommended course of action to the office's Committee on Freedom of Information and

cy (hereinafter referred to as the
nittee). If at any time additional
mation is required from the re-
ee, the Secretary is authorized to
re it or authorize its acquisition
the requester.

The Committee is composed of:

The Chairman;

The Secretary;

The Assistant Secretary;

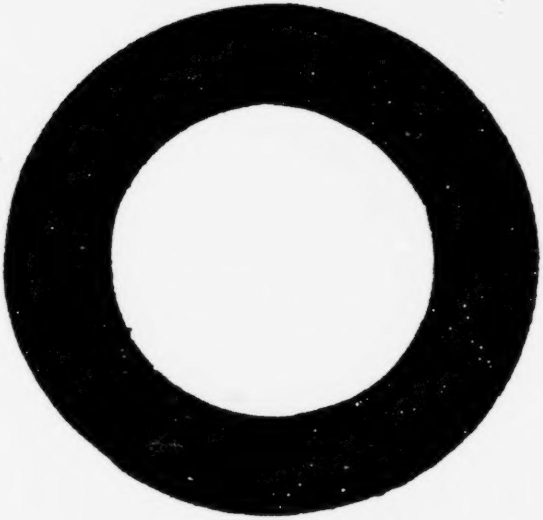
The Administrative Assistant.

The Committee will review the
st for review and the recom-
ed course of action and will rec-
nd a decision on the request for
v to the Chairman, who has the
uthority regarding appeals.

The Chairman will inform the re-
er in writing of the decision on
quest for review within 30 days
ding Saturdays, Sundays, and
Federal holidays) from the date
eipt by CFA of the individual's
st for review unless the Chair-
extends the 30-day period for
cause. The extension of and the
s therefor will be sent by CFA
requester within the initial 30-
eriod. Included in the notice of a
n being reviewed, if the decision
ot grant in full the request for
, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with CFA setting forth the individual's reasons for his disagreement with the decision upon the request for review. The Secretary has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, as well as a concise statement by CFA setting forth its reasons for not making the requested changes, if CFA chooses to file such a statement. A copy of the individual's statement, and, if it chooses, CFA's statement will be sent to any prior transferree of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

§ 2106.7 Schedule of fees.

No fees will be charged for search, review, or copies of the record.



CHAPTER XXII—CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

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PART 2201—RECOGNITION AND SUPPORT OF QUINCENTENARY PROJECTS

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APPENDIX A TO PART 2201—CHRISTOPHER COLUMBUS QUINCENTENARY LOGO

AUTHORITY: Pub. L. 98-375, 98 Stat. 1257; as amended by Pub. L. 100—94, 101 Stat. 700.

SOURCE: 52 FR 10870, Apr. 3, 1987, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting Part 2201 were published at 53 FR 3320, Feb. 4, 1988.

Subpart A—Commission Organization

§ 2201.1 Authorization.

The Christopher Columbus Quincentenary Jubilee Commission was established by Pub. L. 98-375, 98 Stat. 1257. The members of the Commission were sworn into office on September 12, 1985 and the first meeting of the Commission was held on September 12, 1985.

§ 2201.2 The Commission.

(a) *Composition.* The Commission is composed of thirty members as follows:

(1) Seven members appointed by the President upon the recommendation of the majority leader of the Senate in consultation with the minority leader of the Senate;

(2) Seven members appointed by the President upon the recommendation of the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives;

(3) Ten members appointed by the President, which members shall be broadly representative of the people of the United States, and not otherwise officers or employees of the United States;

(4) The Secretary of State;

(5) The Archivist of the United States;

(6) The Librarian of Congress;

(7) The Chairman of the National Endowment for the Arts;

(8) The Chairman of the National Endowment for the Humanities;

(9) The Secretary of Commerce.

(b) *Service without compensation.* Members of the Commission serve without compensation as a member of the Commission except that members may be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(c) *Vacancies.* A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

§ 2201.3 Report to the Congress.

Within two years after the first date of the first meeting of the Commis-

the Commission shall submit to
ress a comprehensive report in-
rating its recommendations for
ommemoration of the quincen-
al of the voyages of discovery of
topher Columbus.

.4 Chairman and Vice Chairman.

suant to the provisions of Pub. L.
5, Sections 3(b)(3) and 3(d), the
nission shall elect a Chairman
Vice Chairman from among the
pers.

3320, Feb. 4, 1988]

part B—Powers and Functions

RCE: 53 FR 3321, Feb. 4, 1988, unless
vise noted.

.11 Personnel.

In carrying out the functions and
nsibilities of the Commission:
The Chairman, with the advice
Commission, shall appoint a Di-
and a Deputy Director;
The Commission may appoint
x the compensation of such addi-
personnel to be paid out of ap-
iated funds to carry out the pur-
of the Commission, not to
d 20 staff members;
The Commission may appoint
x the compensation of additional
nnel to be paid out of such other
as may be available to it from
ions, revenues or such other
es as are authorized by law;
The Commission may request the
of any Federal agency to detail
e Commission, without reim-
ment to the agency, such person-
the Commission may require for
ing out its duties and functions.
The Director has responsibility
dministering the work of the
nission's staff under the over-
of the Chairman and the Com-
on.

.12 Facilities and services.

To accomplish its purposes, the
nission is authorized to procure
ies, services and property; make
acts; and expend in furtherance
purposes funds appropriated, do-
or received in pursuance of such
acts.

(b) The Commission may enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration.

(c) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

§ 2201.13 Donations to the Commission.

The Commission is authorized to accept, use, solicit, and dispose of donations of money, property or personal services, except that the Commission may not accept donations the aggregate value of which in any year exceed:

(a) $250,000 in the case of donations from an individual donor; and

(b) $1,000,000 in the case of donations from a foreign government, corporation, partnership, or other person (other than an individual).

Subpart C—General Provisions

§ 2201.21 Statement of policy.

(a) The Christopher Columbus Quincentenary Jubilee Commission was established by Pub. L. 98-375 to commemorate the 500th anniversary of the voyages of Christopher Columbus. The Commission will plan, encourage, coordinate and conduct activities commemorating the historic events associated with those voyages. Private and public organizations, as well as state and local governments, are encouraged to conduct activities to commemorate the Quincentenary.

(b) The Commission, recognizing its duty under the law to conduct and coordinate for an array of projects, sets forth these regulations for the registration, endorsement and support of projects. These regulations may be changed or amended by the Commission at any time and any such change or amendment will be published in the FEDERAL REGISTER.

[52 FR 10870, Apr. 3, 1987. Redesignated at 53 FR 3321, Feb. 4, 1988]

Subpart D—Types of Quincentenary Involvement

SOURCE: 52 FR 10870, Apr. 3, 1987, unless otherwise noted. Redesignated at 53 FR 3321, Feb. 4, 1988.

§ 2201.31 Types of projects.

Subject to the limitations set forth in this and other sections of these guidelines, there shall be two forms of Commission involvement with projects: Registered Projects and Christopher Columbus Quincentenary Projects.

§ 2201.32 Registered projects.

(a) The Commission, at its discretion, may include a project in a Register of Quincentenary Projects and Events.

(b) Registered projects are defined as those which

(1) Will increase public awareness of the Quincentenary; and,

(2) Meet such other criteria as may be established by the Commission or the agencies or organizations defined in paragraph (c) of this section.

(c) Those interested in requesting that a project be included in the Commission's Register of Quincentenary Projects and Events should make such request in writing to the Commission. The request must include a description of the project, including its time, location and scope, and indicate how it is expected the project will contribute to increasing public awareness of the Quincentenary. The request must also include the signature of the person to be contacted by the Commission regarding the project and identify any individuals, institutions, entities, groups or organizations on whose behalf the signer has been authorized to make the request. Any project which is adequate for inclusion in the Register of Quincentenary Projects and Events may be proposed for registration as a registered project by one of the following:

(1) Any state quincentenary commission or comparable authority established under the laws of a state, territory or the District of Columbia;

(2) The officially constituted quincentenary commissions of Italy, Spain or other countries or governments recognized by the United States.

(d) The Commission reserves the right to decline to include a project in the Register of Quincentenary Projects and Events.

(e) The Commission reserves the right to participate in the development and implementation of registered projects, although primary responsibility for the project will rest with the project's sponsor or sponsors.

(f) Registered projects shall receive a Certificate of Registration from the Commission and a letter of agreement detailing the extent of Commission participation in the project.

(g) Registered projects are expressly enjoined from identifying themselves with the Commission unless expressly authorized to do so in writing by the Commission. Registration with the Commission does not authorize the use of the Christopher Columbus Quincentenary Logo for any purpose by the project or any of its sponsors.

[52 FR 10870, Apr. 3, 1987. Redesignated and amended at 53 FR 3321, Feb. 4, 1988]

EDITORIAL NOTE: In § 2201.32, paragraph (c) introductory text was revised at 53 FR 3321, Feb. 4, 1988. Information collection requirements that were contained in paragraph (c) will become effective upon Federal Register publication of a document by the agency.

§ 2201.33 Christopher Columbus Quincentenary Projects.

(a) A project which is presented to the Commission or originated by the Commission, its members or staff, and which the Commission, after careful review and consultation with appropriate entities, determines that such project furthers the mandate of the law in accordance with section 4(b), and the criteria set forth in this section, shall be designated as an "Christopher Columbus Quincentenary Project."

(b) Christopher Columbus Quincentenary Projects shall be those which, upon the determination of the Commission,

1) Will make an exceptional contri-
tion to the commemoration of the
yages of Columbus,

2) Will have substantial education-
historical and cultural value in rela-
n to the Quincentenary,

3) Will substantially increase public
areness of the Quincentenary,

4) Will be adequately financed and
ected, and

5) Will be accomplished without un-
ısonable cost to the Commission.

c) The Commission reserves the
ht to participate in the develop-
nt and implementation of Christo
er Columbus Quincentenary
ojects although primary responsibil-
for the project shall rest with the
oject's sponsor or sponsors.

d) Christopher Columbus Quincen-
nary Projects shall receive a Certifi-
e stating that the project has been
signated as such and a letter of
reement stating the extent of Com-
ssion participation in the project.

Subpart E—Limitations

OURCE: 52 FR 10870, Apr. 3, 1987, unless
erwise noted. Redesignated at 53 FR
1, Feb. 4, 1988.

201.41 Withdrawal of involvement.

The Commission reserves the right
all times, upon timely and appropri-
notice, and with respect to any
oject to withdraw its involvement,
luding authorization for the use of
logo.

201.42 Publicity.

The Commission shall determine the
nner in which the Commission's in-
vement in a project shall be made
blic.

201.43 Nonexclusive involvement.

Jnless otherwise indicated by the
mmission in advance and in writing,
mmission involvement with a
oject will not in any way limit the
mmission from involving itself in
ner projects of the same or similar
ture.

Subpart F—Christopher Columbus Quincentenary Logo

SOURCE: 52 FR 10870, Apr. 3, 1987, unless otherwise noted. Redesignated at 53 FR 3320, Feb. 4, 1988.

§ 2201.51 Design and notification of certification.

Under the authority granted by Pub. L. 98-375, section 10a, the Commission has designed and adopted a logo as the official symbol of the Quincentenary. This design is depicted and described in Appendix A to this part of the Commission's regulations. The logo is hereby designated by the Commission as the Christopher Columbus Quincentenary Logo and this designation includes any likeness of the logo which, in whole or in part, is used in such manner as to suggest the Christopher Columbus Quincentenary Logo.

§ 2201.52 Authorized use of logo.

The Commission reserves full authority over its logo and permission to use the logo shall be granted only by written authorization by the Commission.

§ 2201.53 Commercial use of Logo.

Pub. L. 100-94 authorizes the Commission to make or permit commercial use of its Logo. The Commission reserves full authority over its Logo and permission for such commercial use shall be granted only by written authorization from the Commission and subject to these regulations governing commercial use of the Logo and any subsequent amendments thereto as may be promulgated by the Commission.

[53 FR 3320, Feb. 4, 1988]

§ 2201.54 Penalties for unauthorized use.

The use of such logo, symbol or mark, unless otherwise authorized by the Commission, constitute a violation punishable under Pub. L. 98-375, section 10(b).

Subpart G—Procedure for Designation of Christopher Columbus Quincentenary Projects

SOURCE: 52 FR 10870, Apr. 3, 1988, unless otherwise noted. Redesignated at 53 FR 3320, Feb. 4, 1988.

§ 2201.61 Submission of proposals.

Proposals for projects to be designated as Christopher Columbus Quincentenary Projects may be submitted to the Commission from corporations, organizations, foundations, government agencies, and individuals.

§ 2201.62 Requirements.

(a) Each proposal submitted to the Commission shall include:

(1) A brief, typewritten summary of the proposal in English, which shall include a narrative statement indicating how the project meets the criteria established by the Commission;

(2) The name, address, and telephone number of the project director, the date of the application, the name and address of the person or persons responsible for the operation and implementation of the project, and the type of endorsement sought from the Commission;

(3) A comprehensive description of the project;

(4) The names and addresses of all persons or organizations proposing, sponsoring and funding the project;

(5) The total actual and estimated cost of the project, the total amount of funds available (excluding funds committed but not yet received), the names of government agencies and programs from which funds have been received, the source for funds not yet received and a short description of the financial accounting employed for the project;

(6) A statement to the effect that the proponent agrees to be bound by all policies, requirements, regulations and other decisions that have been made or will be made by the Commission affecting the project and those responsible for it; and,

(7) The signature of the perso
persons responsible for the pro
and the project director.

(b) All materials submitted to
Commission shall become the prop
of the Commission.

(c) All materials shall be deliv
personally or by mail, return rec
requested, to the office of the C
mission at 1801 F Street, NW., T
Floor, Washington, DC 20006 or t
designated address.

(d) Although not required, it wi
helpful to the Commission to rec
one (1) original and two (2) copie
all materials included in a prop
submitted to the Commission.

(Approved by the Office of Manage
and Budget under control number 3
0016.)

[52 FR 10870, Apr. 3, 1987, as amended
FR 3321, Feb. 4, 1988]

§ 2201.63 Review.

(a) The Commission staff will
form an initial, procedural revi
all proposals submitted to the C
mission.

(b) After the initial proced
review by the staff, the staff s
refer the proposed project to the
propriate committees of the Com
sion which shall submit their rec
mendations to the Commission
final action. The Commission shall
termine the manner in which pro
als shall be reviewed.

(c) Unless delegated by vote of
Commission to the Director of
Commission, final authority to de
Commission involvement with
projects remains with the full C
mission.

(d) All communication to and f
the Commission regarding a pro
shall be made through the project
rector designated in the proposal.

§ 2201.64 Confidentiality.

Although the Commission can
guarantee confidentiality in its rev
of proposals, the Commission
make every possible effort to maint
the confidentiality of those propo
for projects which, in their summa
request confidentiality.

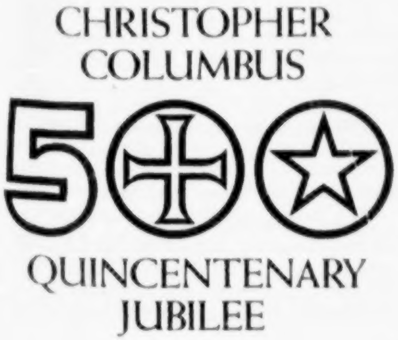
§ 2201.65 Notification.

The Commission will notify the project director, in writing, the determination concerning an award for endorsement. The Commission may issue a letter of encouragement when a project demonstrates merit but has not obtained Commission approval as an Christopher Columbus Quincentenary Project. The Commission shall also issue a brief letter of explanation when a project is denied endorsement.

APPENDIX A TO PART 2201—CHRISTOPHER COLUMBUS QUINCENTENARY LOGO

This Appendix is intended to improve the quality of Part 2201 by setting forth a description and depiction of the Christopher Columbus Quincentenary Logo by the Christopher Columbus Quincentenary Jubilee Commission. The Logo is the subject of Subpart E, §§ 2201.41 through 2201.44, and it is referred to repeatedly thereafter. This Appendix contains no requirements or restrictions which are not already in the regulations.

Description: The Logo consists of the number "500" in outline form, as represented in the illustration below accompanied by the legend "Christopher Columbus Quincentenary Jubilee." In color, the Logo is intended to appear on a white field. The number "five" is in red, the first zero and center cross design are in green, the second zero and center star design are in blue. The words "Christopher Columbus" appear above the numbers in gray and the words "Quincentenary Jubilee" appear under the numbers in gray. When printed in color, the following PMS color designations must be used: Red PMS 485; Green PMS 355; Blue PMS 285 and Gray PMS 424. The Logo may also be duplicated wholly in black on a white or light-colored field or in white on a black field.



PART 2202—RECOGNITION OF COMMERCIAL QUINCENTENARY ACTIVITIES

Subpart A—General Policy on Commercial Involvement

Sec.
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2202.12 Financial support.
2202.13 Nonexclusive involvement.
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AUTHORITY: Pub. L. 98-375, 98 Stat. 1257; as amended by Pub. L. 100-94, 101 Stat. 700.

SOURCE: 53 FR 3322, Feb. 4, 1988, unless otherwise noted.

Subpart A—General Policy on Commercial Involvement

§ 2202.11 Statement of policy.

(a) The Commission is authorized to accept, use, solicit and dispose of donations of money, property or personal services from commercial entities, groups or organizations as well as individuals, or from other, non-commercial sources. In addition, the Commission seeks to encourage participation in and support for its commemorative program by commercial entities, groups and organizations. In determining whether and how to associate itself with activities conducted, sponsored or organized by commercial entities, groups and organizations or with any commercial activities of non-profit, charitable, public, educational, scholarly, governmental or other entities, groups and organizations not primarily or exclusively commercial in nature or purpose, the Commission shall give due consideration to the following:

(1) The extent to which involvement will serve to further the overall goals of the Commission's commemorative program;

(2) The appropriateness, as determined by the Commission, of any products, goods or services which may be identified with the Commission or its commemorative program through use of the Logo or other means;

(3) Whether identification or involvement with a particular commercial activity, product or organization is, in the Commission's judgment, in the best interests of the Commission and its commemorative program and goals;

(4) To the extent possible, the existence of any historical or other links between specific commercial activities, groups or organizations and the voyages or related personalities, events and activities which are the subject of the Commission's commemorative program;

(5) The extent to which the Commission's involvement with a particular commercial activity, group or organization will serve to promote public awareness of its commemorative program or educational and cultural activities planned and conducted in connection with the program; and

(6) The public benefit or interest served by involvement with a particular commercial activity, group or organization.

(b) The general criteria or considerations in paragraph (a) of this section are not exclusive or mandatory. The Commission's decisions whether or not to become involved with a particular commercial activity, entity, group or organization, are, subject to any limitations imposed by law, within the sole discretion of the Commission.

(c) The promulgation by the Commission of regulations governing its involvement with commercial activities
shall not be construed as limitin
affecting the Commission's rights
authority with respect to non-com
cial involvement.

§ 2202.12 Financial support.

Commission involvement with
mercial activities, projects, ent
groups or organizations shall not
gate the Commission to provide fi
cial support to any such acti
project, entity, group or organizati

§ 2202.13 Nonexclusive involvement.

Unless otherwise agreed to by
Commission or its designee for
purposes in advance and in wri
Commission involvement with
commercial activity, project, en
group or organization will not in
way limit the Commission from
volvement with other activ
projects, entities, groups or orga
tions of the same or a similar na

§ 2202.14 Definition.

(a) For purposes of these re
tions, the general term "commer
is normally understood to mean
vate, for profit activity and the
viduals, entities, groups or orga
tions engaged in such activity.

(b) Nothing in this definition s
however, be interpreted as preclu
the Commission from permit
granting, authorizing or licensing
mercial and/or non-commercial u
its Logo by non-profit, non-comme
entities, groups or organizations;
cational facilities or institutions;
viduals, groups, institutions or or
zations engaged in scholarly rese
charitable or cultural groups or
nizations; and local, state and fe
government(s) or instrumental
thereof.

Subpart B—Involvement With Commercial Activities

§ 2202.21 Commission decisions.

Unless delegated by vote of the C
mission to a committee of the Com
sion, or to the Commission's Dire
authority to decide Commission
volvement with commercial activ

remains with the full Commission. The Commission shall give notice in writing with respect to decisions regarding commercial involvement.

§ 2202.22 Withdrawal of involvement.

The Commission reserves the right at all times and with respect to any involvement with commercial activity to withdraw its involvement or recognition, or both, including any authorization for use of the Logo.

§ 2202.23 Types of involvement.

Initially, the Commission contemplates there will be three forms of involvement with commercial activities:

(a) *Recognition of sponsorship.* In return for donations offered or solicited from commercial sources, the Commission may, on its own initiative, or upon request, recognize the contributions of specific donors by entering the name of such donors on a Register of Official Sponsors to be maintained at the Commission's offices. The Commission may also authorize a donor listed in the Register to identify itself to the general public as an "Official Sponsor of the Christopher Columbus Quincentenary Jubilee." Any conditions under which a donor may be permitted to identify itself to the general public as such an official sponsor shall be prescribed in writing by the Commission.

(b) *Recognized commercially sponsored projects.* As set forth in Part 2201 of the Commission's regulations, the Commission may designate projects originated by commercial sources as Official Quincentenary Projects. In connection with such inclusion or designation, the Commission may authorize a commercial sponsor or sponsors to identify themselves with the project or the Commission and/or to make use of the Logo. The conditions under which commercial sponsors of "Registered" or "Official" projects or events may be permitted to identify themselves with the project or the Commission and/or make use of the Logo shall be prescribed in writing by the Commission.

(c) *Licensing.* Subject to the requirements of applicable law, these regulations and any amendments thereto as may subsequently be required, the Commission may enter into agreements by which it will license commercial use of its Logo.

Subpart C—Christopher Columbus Quincentenary Logo

§ 2202.31 Design and identification.

Under the authority granted by Pub. L. 98-375, Sec. 10a, as amended, the Commission has designed and adopted the "Christopher Columbus Quincentenary Logo" as the official symbol or mark of the Quincentenary. This design has been depicted and described in Appendix A to Part 2201 of this chapter. Commercial use of the Logo, including any likeness of this Logo which, in whole or in part, is used in such manner as to suggest this Logo, shall be governed by these regulations.

§ 2202.32 Authorized commercial use of Logo.

Authorization for commercial use of the Christopher Columbus Quincentenary Logo (hereinafter the "Logo") shall be granted only at the sole discretion of the Commission and in accord with these regulations. Reproduction of the Logo is permitted only after written authorization of the Commission. Unless expressly authorized otherwise in writing by the Commission, authority to reproduce the Logo shall entail the obligation to reproduce it in its entirety, that is including both the number "500" in outline form as represented in the illustration in Appendix A to Part 2201 of this chapter and the complete accompanying legend above and below the numerical symbol, also according to the specifications set forth in Appendix A. Authorized users may not delegate use of the Logo to others unless authorized to do so in writing by the Commission or by these regulations.

§ 2202.33 Commercial use.

Pub. L. 100-94, Sec. 7(a), empowers the Commission, in accordance with these rules and regulations, and such other rules and regulations which the Commission may from time to time prescribe, to authorize the manufacture, reproduction, use, sale or distribution of the Logo. To this end, the Commission shall establish a licensing program to govern its authorization of commercial use of the Logo in connection with the production or manufacture of any commercial goods, as part of an advertisement promoting commercial goods or services, or as part of an endorsement of such goods and services. The Commission reserves the right to solicit individuals, entities, groups or organizations regarding entry into licensing or commercial use authorization agreements.

§ 2202.34 Licensed usage.

(a) In general, licensed commercial usage of the Logo shall not involve any official endorsement of products. The purpose of licensing will be to authorize use of the Logo through a license agreement for its use in product design or packaging or in promotional activities or materials conducted or produced by the licensee.

(b) At a minimum, authorized use of the Logo shall be governed by these regulations, with any additional, specific terms of and conditions upon such authorized use to be determined by the specific license agreement between the Commission and the authorized user.

§ 2202.35 Licenses—Proposals, Committee on Licensing.

(a) The Commission may delegate authority to a committee on product licensing, to be organized and staffed as the Commission determines. The Commission reserves the right to publish any additional guidelines that may be necessary to carry out activities and functions related to licensing.

(b) The Commission may delegate its authority to accept, consider, review and solicit proposals for licenses and to decide whether to enter into licensing agreements with those seeking or interested in such agreements as well as all other responsibilities and functions necessary to carry out a licensing program, including negotiating the terms of licensing agreements.

(c) The Commission invites prospective licensees to submit proposals for license agreements. Each proposal for
entering into a licensing agre
shall be addressed to the Christ
Columbus Quincentenary J
Commission at 1801 F Street
Third Floor, Washington, DC
Each proposal shall be accom
by a summary or synopsis, not e
ing two single-spaced, typew
pages in length, which shall incl

(1) The name, address and tele
number of the proposer; the d
the application and the name, a
and telephone number of the
or persons responsible for nego
and administering any license
ment on behalf of the proposer;

(2) A brief description of the p
or use for which the license is s

(3) A summary of proposed te
any licensing agreement;

(4) A statement to the effec
the party submitting the pr
agrees to be bound by all polic
quirements, regulations or othe
sions that have been made or
made by the Commission affecti
license agreement between the
mission and the submitting party

(5) A brief description of the
cial accounting that will be em
by the party submitting the pr
with respect to any royalty or fe
gations to the Commission in c
tion with the license;

(6) A designation, in the synop
any business confidential or p
tary information or materials
tained in the proposal, and a r
that it be treated as such;

(7) The signature(s) of the per
persons authorized to make a pr
on behalf of the individual,
group or organization submitti
proposal.

(d) The proposal accompanyi
synopsis shall also include the
mation required in paragraphs
through (7) of this section and
as appropriate or necessary, p
more comprehensive or detail
scriptions, information or data
Commission reserves the right
quest such additional inform
from a party submitting a propo
it may deem necessary.

(e) The Commission shall not
sponsible for any materials th
not delivered personally or by ce
mail, return receipt requested,

address indicated above or to any other designated address.

(f) Although the Commission cannot guarantee confidentiality in its review of proposals, the Commission will make every possible effort to maintain the confidentiality of those proposals for projects which, in their synopsis, request confidentiality.

EDITORIAL NOTE: Section 2202.35 was added at 53 FR 3322, Feb. 4, 1988. The public is not required to comply with the collection of information requirements contained in paragraph (c) of this section until approved by OMB. A notice will be published in the Federal Register when approval is obtained.

§ 2202.36 Fees and royalties.

(a) Pub. L. 100-94, Sec. 7(a)(3), authorizes the Commission to charge fees for any authorization of commercial use of its Logo. In general, the amount of any fee, royalty or other payment to be charged by the Commission in return for a license or authorization to make commercial use of the Logo shall be established by agreement between the parties.

(b) A non-refundable advance against future royalties will normally be required from the licensee.

(c) The Commission may, in its sole discretion, determine the circumstances under which it may choose to waive payment of fees, royalties or other charges for commercial use of the Logo.

§ 2202.37 Revocation.

The Commission reserves the right at all times and with respect to any license or authorization of commercial use of the Logo to withdraw, revoke or otherwise terminate such license or authorization.

§ 2202.38 Termination.

(a) Commercial use licenses for products will expire on the statutory termination date of the Commission with no residual rights to the manufacturer. Products manufactured on or before the termination date may be sold after such date subject to payment of applicable royalties to the Comnission or its successor authorized to receive such payments.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commission may by agreement permit non-profit, non-commercial entities, groups or organizations, or individuals, as defined in § 2202.14 of these regulations, to continue to identify themselves with the Quincentenary and/or to make non-commercial use of the Logo in connection with ongoing educational, cultural or scholarly activities or projects undertaken with the Commission's sponsorship, approval or recognition.

§ 2202.39 Place of manufacture and quality.

To the extent possible in light of the special international scope and character of the Quincentenary, products licensed by the Commission under these regulations must be made in the United States of America, its territories and possessions within the meaning of Federal Trade Commission "made in USA" designation guidelines. Any exceptions to this policy must be approved by the Commission or its designee for product licensing.

§ 2202.40 Excluded products.

As implied under Pub. L. 98-375, as amended, the Commission or its designee for such purposes has the discretion to exclude product areas from the licensing program. Any decision to exclude a product or product area from the licensing program shall be in writing and shall include a brief statement of the reason or reasons for such exclusion.

FINDING AIDS

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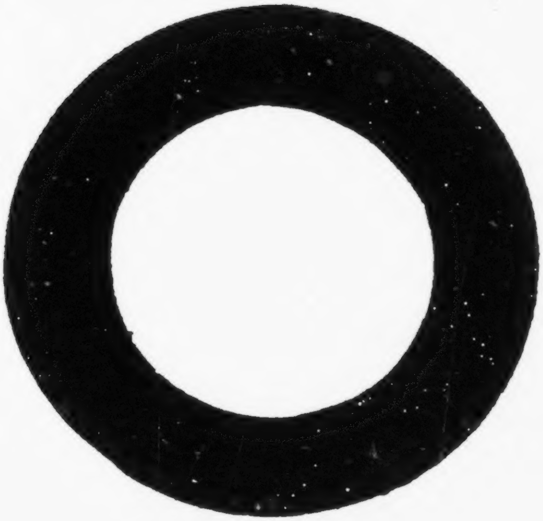

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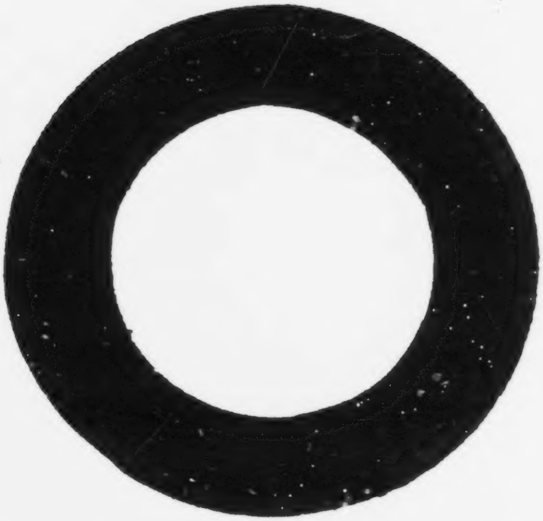

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Redesignation Table No. 1

At 42 FR 59212, November 15, 1977, regulations formerly appearing in 45 CFR Chapter IX, Administration on Aging were transferred to 45 CFR Chapter XIII, Office of Human Development.

The regulations added to Chapter XIII are redesignated as regulations in Subchapter C—Administration on Aging, Older Americans Programs of Chapter XIII.

For the convenience of the user, the following table shows the relationship of the former Part numbers contained in Chapter IX to their new Part numbers reflected in Chapter XIII.

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[1] Revoked.

Redesignation Table No. 2

At 51 FR 23056, June 25, 1986, regulations formerly appearing in 36 CFR Chapter X, were transferred to 45 CFR Chapter XXI.

For the convenience of the user, the following table shows the relationship of the former Part numbers under 36 CFR Chapter X and the new part numbers in 45 CFR Chapter XXI.

Old Part	New Part
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1002	2106

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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